IN THE

Supreme Court of the United States

October Term, 1942

MAR 2 1943

CHARLES ELMORE CROPLEY
CLERK

779

NICHOLAS J. CURTIS,

Petitioner,

vs.

UTAH FUEL COMPANY, a corporation, its officers and agents, including DR. E. R. MURPHY; DR. ROBERT K. ALLISON (deceased); DR. FRANCIS S. BASCOM (deceased); H. COLLIN MINTON, JR., and FERDINAND ERICKSEN, its attorneys; NICHOLAS J. PAPPAS, Paterson, N. J.; GEORGE N. PAPPAS, Paterson, N. J.; SOTIRIOS NICHOLAIDIS, Paterson, N. J. (not served); HARRY SUSSMAN, Paterson, N. J.; WILLIAM V. ROSENKRANS, Paterson, N. J.; LOUIS BROWNLOW, Washington, D. C. (not served); CHARLES W. KUTZ, Washington, D. C. (in default); DR. PERCY HINKLING, Washington, D. C. (deceased); WILLIAM H. FAY, Washington, D. C. (cannot be found); WILLIAM J. HAZEN (MELVIN J. HAZEN), Washington, D. C. (cannot be found); WILLIAM M. FOLLAND, Salt Lake City, Utah (in default; no motion or other pleading); DR. LESLIE J. FAUL, Salt Lake City, Utah (no appearance; in default); DR. SAMUEL WOLF, Salt Lake City, Utah (deceased); SIMON BAMBERGER, Salt Lake City, Utah (deceased; BAMBERGER COAL CO. established); DR. FREDERICK [illegible], Springville, Utah (appear by Special Appearance name only); DR. FRED W. TAYLOR, Provo, Utah (no appearance; in default); DR. [illegible] GALLACHER, Salt Lake City, Utah (appearance by Special Appearance name only); DR. D. E. SMITH, Salt Lake City, Utah (appearance by Special Appearance name only); CAROL C. JOHNSON, New York (Motion to Retain Jurisdiction); JOSEPH RIRIE, Salt Lake City, Utah (deceased); D. O. LARSON, Salt Lake City, Utah (no appearance; in default); CHARLES E. MAYER, Salt Lake City, Utah (no appearance, name only on Special Appearance list, no Motion or Affidavit); MARK TUTTLE, Salt Lake City, Utah (no appearance; in default).

Respondents.

PETITION FOR WRIT OF CERTIORARI

NICHOLAS J. CURTIS, LL.B., Petitioner,
Appearing in Person,
P. O. Box 372,
Trenton, New Jersey.

GROVER A. GILES,
Attorney General of the State of Utah,

ZAR E. HAYES,
Assistant Attorney General of the State of Utah,
Associated with
H. COLLIN MINTON, JR. and
M. ERUA CAMPBELL,
As Attorneys for Appellees Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mayer and William D. Sutton,

WILLIAM V. ROSENKRANS,
ROSENKRANS & ROSENKRANS,
Attorneys for Rosenkrans, et al.,
5 Cook Street,
Paterson, New Jersey.

CAROL C. JOHNSON,
Defendant, Absconding.

F. Hunsinger Co., Appellate Printers, Camden, N. J.

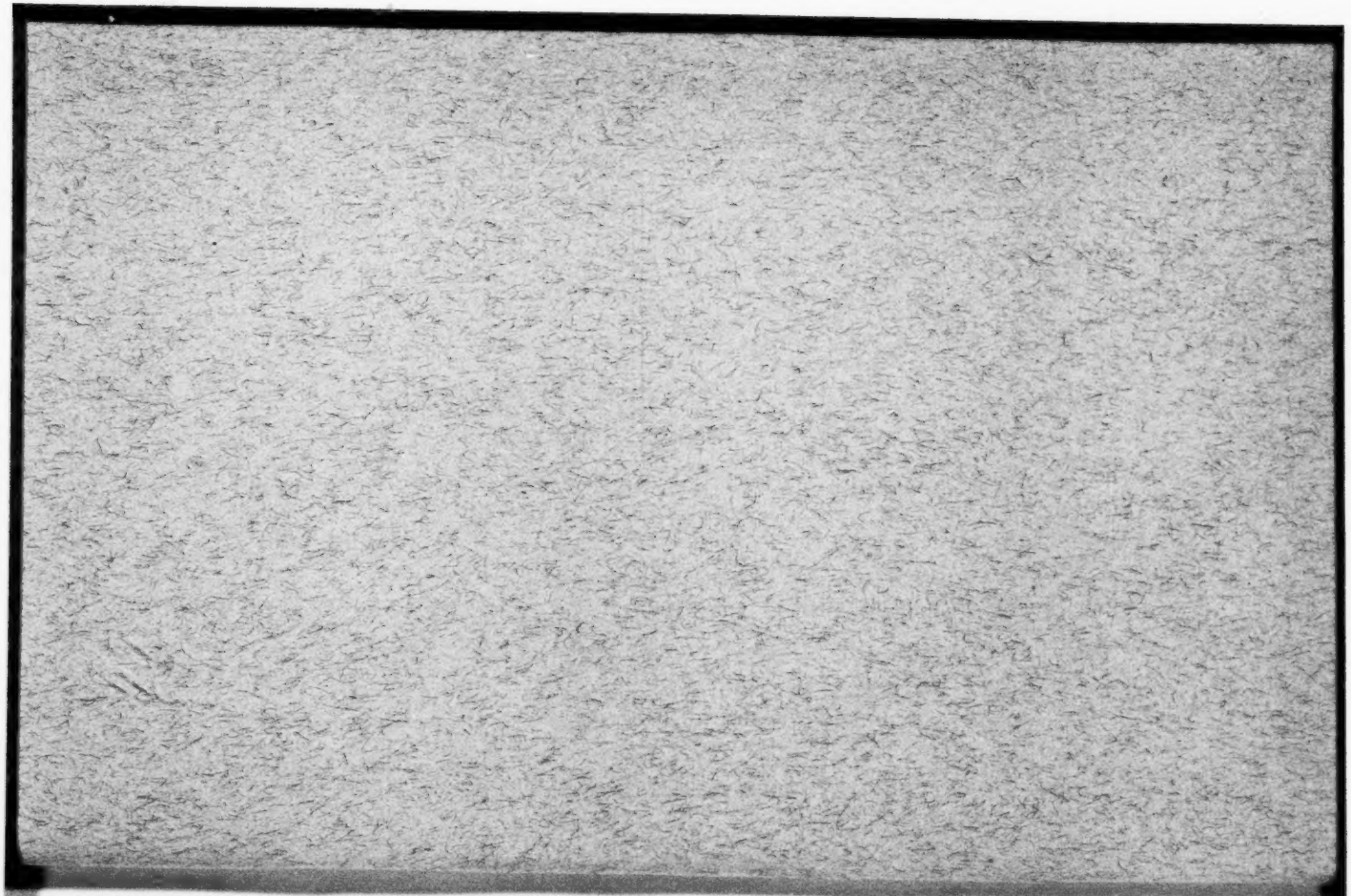


TABLE OF CONTENTS

		page
1.	The Caption of the Petition for Writ of Certiorari	2
2.	The Petition for Writ of Certiorari	41
3.	The Petitioner's Verification and Certificate	41
4.	The Notice to the Respondents	42
5.	Material Parts of the Decision of the Case of United States vs. Thompson	43-44
6.	Section 5 of the Act of the Forty-ninth Congress, Sess. II, Chap. 137, March 3, 1887, Also Parts of Sec. 1 of Said Act	45
7.	The Order of the Circuit Court of Appeals for the Third Circuit Denying Appellant's Two Motions to Strike the Two Memoranda of the Appellees	46
8.	Per Curiam Opinion of the Said C. C. A. 3rd C., Affirming the Orders of the District Court	47-48
9.	The Document Index of the Photostated Parts of the Record and Exhibits Attached Thereto as Certified to this Court by the Clerk of said C. C. of A. 3rd C.	48-57
10.	The Exceptions to the Rulings of the District Court	57-61
11.	The Petitioner's Brief in Support of the Petition for Writ of Certiorari	63-83
12.	The Petitioner's Brief to the Said C. C. A. 3rd C., which is Made Also the Basis of the Proceedings in Certiorari ..	84-253
13.	The First Memorandum of the Appellees. Grover A. Giles, Attorney General, and Zar E. Hays, Assistant Attorney General of the State of Utah, Appearing for Certain of the Appellees	255-256
14.	The Appellant's First Motion to Strike the Said First Memorandum	257-263
15.	The Second Memorandum of the Appellees	265-276
16.	The Appellant's Second Motion to Strike the Said Second Memorandum	277-288
17.	The Memorandum of Appellees Referred to in the First Memorandum Filed by the Said Attorney General from Utah	289-291
18.	The Appellant's Memorandum Filed Against the Said Three (3) Memoranda of Appellees. (Title XXIV of the U. S. R. S. has been copied from a photostated copy attached to said Memorandum. By right and justice, and the laws of the United States the provisions of the laws found in the sections provide sufficient grounds and afford sufficient remedies to give a thorough and complete adjudication of every question present in the suit. May it please the Court to see it. Nicholas J. Curtis, Petitioner.) ..	293-305
19.	Sections 19598 and 19599 of Vol. 17, Hughe's Federal Practice—Jurisdiction.—Federal Questions.—Method of Stating Jurisdiction	307-308

Citations thereon are to be found on page 308.

134527

TABLE OF CONTENTS

CASES CITED, QUOTED, AND ON WHOSE AUTHORITIES ARE BELIEVED TO SUSTAIN THE PETITIONER'S CAUSE.

page

Aetna Casualty & Surety Co. vs. Yeats 25

American Home Fire Assur. Co. vs. Hargrove 11

American Ins. Co. vs. Lucas 27

Anarchists' Case, The 58

Arenstien vs. American Soc. of Composers and Publishers, et al. 12

Automobile Ins. Co. of Hartford, Conn., vs. Springfield Dyeing Corp. 12

Aztwr Min. Co. vs. Ripley 14

Atlas Beverage Co., et al. vs. Minneapolis Brewing Co. 12

Bachrach vs. Morton 30

Bacun vs. United States 26

Beals vs. Curtis 5

Behrle vs. United States 27

Bein Co. vs. Landy 12

Benson vs. Henkel 24

Bethke vs. Grayburg Oil Co. 25

Blackmon vs. United States 27

Board of Com's of Shawnee County, Kan., vs. Hurley 304

Boehm vs. United States 27

Bridgeman vs. United States 25

Brikey vs. United States 27

Bryant vs. United States 31

Burton vs. United States 24

Cagle vs. United States 31

Calahan vs. United States 22

Central R. Co. of New Jersey vs. Central Hanover Bank & Trust Co. 12

C. E. Stevens Co. et al. vs. Foster & Kleiser Co., et al. 283

Cherry-Vurrele Co. vs. Thatcher 11

TABLE OF CONTENTS

	page
Church Street Bldg. Corp., et al., Re.	24
City of Sunster, et al. vs. Spur Distributing Co.	11
Clark Bros. Co. vs. Portez Oil Co.	12
Cohens vs. Virginia	307
Continental Oil Co. vs. Jones	12
Continental Illinois Nat. Bank & Trust Co. vs. Chicago, etc., Co.	23
Cooks vs. Avery	30
Cooper vs. Jewett	304
Creel vs. Hudspeth	11
Craig, Ex Parte	71
Crowell vs. Baker Oil Tools	11
Curtis vs. Zavitsanos	5
Dealtry vs. Posse School, Inc.	25
Dennick vs. Central R. R. Co.	22
Diversey Bldg. Corp., Re.	25
Eldorado, Inc., Re.	5
Eley vs. United States	26
Fabacher vs. United States	25
Federal Deposit Ins. Corp.	26
Federal Power Com'n vs. Metropolitan Edison Co.	24
Feibelman vs. Packard	30
Fitchie vs. Brown	304
Ford Motor Co. vs. National Labor Relations Board	12
Forsyth vs. City of Hammond	14
Frey and Son vs. Cudahy Packing Co.	25
Funk vs. United States	45
Gedes vs. Anaconda Mining Co.	25
Gerli vs. Silk Ass'n of America	308
Gen. Inv. Co. vs. Lake Shore Ra'way	25, 284

TABLE OF CONTENTS

	page
Glen Coal Co. vs. Dickinson Fuel Co.	26
Goodacre vs. Panagopoulos	24
Gray McFawn & Co. vs. Hegarty, Conoy & Co.	11
Gray vs. United States	11
Grayson vs. United States	24
Green Valley Creamery Co. vs. United States	11
Greer Mills & Co. vs. Stoller	284
Griggs vs. Bulton	24
Haas vs. Henkel	24
Hale vs. Lawrence	10
H. H. Cross Co. vs. Simons	11
Hansen Packing Co. vs. Armour and Co.	25
Hartford Accident Co. vs. Bunn	303
Hays vs. Kelley	12
Hellawell vs. Grafeld	25
Henna vs. Saurl & Subira	304
Holnes vs. United States	44
Homes vs. Rowe	25
Horner vs. United States	25
Howard vs. United States	31
Ingenuities Corporation of America vs. Trau	308
Interstate Circuit, et al. vs. United States	14
Jeffrey-Nichols Motor Co. vs. Hupp Motor Car Corp.	25
John Gund Brewing Co. vs. United States	26
Julian vs. Central Trust Co.	24
Kansas Pac. R. Co. vs. Atkinson T. & S. R. Co.	20
Kuhn vs. Pacific Mutual Life Ins. Co. of Cal.	308
Kurn, et al. vs. Beasley County Judge	11

TABLE OF CONTENTS

	page
Lambert vs. United States	26
Lamar vs. United States	24
Lanning vs. Osborn	25
Lanow vs. United States	14
Lasswell Land & Lumber Co. vs. Lee Wilson & Co.	304
Lawenstien vs. Evans	284
Lincoln vs. Claffin	58
Lowe, et al. vs. Consolid. Edison Co., Inc., et al.	308
Lucas vs. United States	27
Lung vs. United States	31
Mayo vs. Lakeland Highlands Canning Co.	11
McDonald vs. United States	12, 14
McKenna vs. Fisk	22
McNabb, et al. vs. United States	27
Minnesota vs. Northern Securities Co.	25
Mississippi Valley Timber Co. vs. Mengel Co., et al.	12
Mitchel vs. Harmoney	22
Mitchel vs. Greenough	23, 25
Moore vs. City of Lehigh	64
Mount Holly Paper Co. vs. Davis, et al.	12
Murray vs. Patrie	26
Myres vs. United States	31
National Reserve Ins. Co. vs. Scuder	11
New Orleans vs. Houston	30
Nicholas vs. Minnesota Mining & Manufacturing Co.	11
North Laramie Land Co. vs. Hoffman, et al.	24
Occidental Life Ins. Co. vs. Thomas	11
Oil Shares, Inc., vs. Commercial Trust Co.	12
Osborn vs. Bank of United States	29

TABLE OF CONTENTS

	page
Outlaw vs. United States	28
Paine Lumber Co. vs. Neal	25
Palliser, Re.	23, 24
Patton vs. United States	39, 44
Pauly Jail Bldg. & Mfg. Co. vs. Hemphill County	304
Pedcock vs. Harrington	284
People Tobacco Co. vs. American Tobacco Co.	24
Peoria & P. U. Ry. Co. vs. United States	304
Pers vs. Hudspeth	11
Peterson, Ex Parte	44
Philadelphia & Reading Coal & Iron Co., Re:	25
Pullman Co. vs. Chicago & N. W. R. Co.	11
Putnam vs. United States	24
Radford vs. United States	32
Radin vs. United States	25
Railroad Commission vs. Maxcy	11
Rease vs. United States	25
Rogers vs. Marion	304
Rosenkrans, Re.	58
Samuel White vs. James A. Johnson	12
Sevens vs. Edwards, et al.	12
Shell Oil Co. vs. District Court of the U. S.	25
Smith vs. United States	25
Snydam vs. Broadnax	68
Southern Pine Lumber Co. vs. Ward	304
Standard Acc. Ins. Co. vs. United States	303
State of Tennessee vs. Union Planters Bank	28, 302
Steelman vs. All Continental Corp.	24
Subold, Re.	24

TABLE OF CONTENTS

	page
Tennessee vs. Davis	31
Thomas vs. United States	25
Title Guaranty & Surety Co. vs. United States	14
Toledo Scale Co. vs. Computing Scale Co.	303
United States vs. Alaska Cons. Canneries	24
United States vs. Bakes	26
United States, Ex Parte (3 cases)	32, 39, 43
United States vs. Babcock	58
United States vs. Bopp	32
United States vs. Borg-Waren Corp.	11
United States vs. Cassidy	58
United States vs. Cohn, et al.	
United States vs. Cooper Corp.	283
United States vs. Downey	25
United States vs. Falcone, et al.	26
United States vs. Falone	27
United States vs. Freeman	24
United States vs. Fullheart	24
United States vs. Gradwell	286
United States vs. Harris	27
United States vs. Harding	44
United States vs. Jackobson	23
United States vs. John Kelso Co.	26
United States vs. Johnson	27, 58
United States vs. Jordan	25
United States vs. Kissel	23
United States vs. Lombardo	
United States vs. Mooney	59
United States vs. Norris	24
United States vs. Olmstead	303

TABLE OF CONTENTS

	page
United States vs. Peoni	26
United States vs. Perlstein	27
United States vs. Sall	26
United States vs. Silverman	22
United States vs. Standard Oil Co.	58, 59
United States, for Use and Benefit of Stringville	303
United States vs. Thompson, parts of decision	33-34
United States vs. Wells	303
United States vs. Wood	44
United States vs. Yasser	26
United Cigar Whelan Corp., et al. vs. United States	26
Union Bank vs. Jolley Administrators	60
Utility Manufacturing Co. vs. Elkin Laboratories	68
Vacuum Oil Co. vs. Eagle Oil Company	22
Western Union Tel. Co. vs. Ann Arbor R. Co.	307
Westmoreland Asbestos Co. vs. Johns-Manville Corp.	308
Western Pocahontas Corp.	26
Whittel vs. Rocke	25
Wilder vs. United States	

IN THE

SUPREME COURT OF THE UNITED STATES.

WASHINGTON, D. C.

No. October Term, 1943.

NICHOLAS J. CURTIS,

Petitioner,

against

UTAH FUEL COMPANY, a Corporation, et als.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND FOR THE THIRD CIRCUIT, PHILADELPHIA, PA.

NICHOLAS J. CURTIS, LL.B.,
Petitioner Appearing in Person,
Post Office Box 972, Trenton, New Jersey.

Articles of the United States Constitution and Statutes Involved. Jurisdiction founded on the existence of several Federal Questions and amount in controversy. The action

arises under the Constitution of the United States, Article I, Section 9, Subdivision 2; Article III, Section 2; the Amendments to the Constitution of the United States, Sections IV, V, VI, VIII and XIV, and U. S. C. A. Title 8, Chapter 3, Sections 41, 43, 47, (1), (2), (3); Title 15, Sections 1, 2, 3, 4, 5, 15, and 24; Title 28, Sections 103, 725, and 729; Section 41, (1) c, (8), (12), (14), (17); Chapter 2, Section 41 (2) Crimes and Offenses; Chapter 4, Section 103, Offenses begun in one district and completed in another; The Treaties of the United States with the Kingdom of Greece. (Rule 84. Forms. Federal Rules of Civil Procedure Simplicity and Brevity of Statements which the rules contemplate. Form 2.—Allegation of Jurisdiction, pp. 106-107 of the Rules.) (See page 3 of the Complaint.) Also under the Constitution and Statutes of the State of Utah. See the Appendix of the Complaint, pp. 91-92.

To the Honorable the Chief Justice and Associated Justices of the Supreme Court of the United States:

MAY IT PLEASE THE COURT:

YOUR Petitioner, Nicholas J. Curtis, respectfully shows unto this Honorable Court as follows:

The plaintiff in this suit, Nicholas J. Curtis, appearing in person, filed this his suit by the filing of his Complaint with the Clerk of the United States District Court within and for the District of New Jersey, on January 12, 1940. Plaintiff also made a deposit in the sum of $25.00 for Clerk's Fees and Costs. On March 25, 1940, the First Supplemental Complaint was filed and Summons issued (26 Copies). April 16, 1940, Summons returned served on Utah Fuel Company by serving its attorney on April 3rd, on Utah Fuel Company by serving Vice President, on Mrs. Helen N. Pappas and Nicholas Pappas and William V. Rosenkrans

personally April 6th, Harry Sussman, out of District. Sotirios Nicholaidis, "deceased" filed. April 17, 1940, Notice of Motion to Strike Complaint and Quash Summons re Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans, Filed. (See the said Motion on pp. 45-46-47 of the printed part of the Record.) April 22, 1940, Summons Returned served Dr. R. E. Murphy on April 8th, on W. D. Sutton, Mark Tuttal, Wm. H. Folland by serving wife; on Dr. D. E. Smith and D. O. Larson on April 9th, on April 11th Dr. Frederick Dunn, Dr. Samuel Wolf, Joseph Ririe and Simon Bamberger, deceased, Dr. J. C. Paul and Dr. Arthur Taylor, unknown, filed. April 22, 1940, Summons returned served on Chas. W. Kutz, personally April 6th, Louis Brownlow "not found", and Dr. Hickling, deceased, Wm. H. Fay and William J. Hazen not found, filed. April 22, 1940, Summons returned served on Carol C. Johnson, April 8th, filed. April 22, 1940. Hearing on Motion to Strike Complaint and quash service of summons as to Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans. Plaintiff submitted his case on his Opposing Affidavit. (See the said Affidavit on pp. 47-63. Nine supporting affidavits, pp. 63-70 of the printed parts of the Record.) Decision reserved (Walker). April 23, 1940. Opposing Affidavit Opposing the Motion to Vacate and Set aside the service of Summons filed by Carol C. Johnson, filed and served personally. April 24, 1940. Special appearance and Notice re Utah Fuel Company and H. Collin Minton, Jr., filed. Notice of Motion for Order Striking Complaint as to Utah Fuel Company and H. Collin Minton, Jr., filed. April 26, 1940. Opposing Affidavit Directed against the Motion to Strike the Complaint filed. (See it. pp. 8-33 of the Printed Parts of the Record. May 6, 1940. Hearing on Motion for Order vacating and setting aside service of summons and complaint as to Carol C.

Johnson. No appearance for the motion. Plaintiff submitted his part of the argument on his said Opposing Affidavit. Decision Reserved (Walker). May 13, 1940. Motion and Application to Take Depositions of Parties out of State filed. May 13, 1940. Notice of Motion for Order staying proceedings filed. May 13, 1940. Hearing on motion to take testimony out of the United States. Decision Reserved (Walker) May 13, 1940. Amendment to Original Complaint filed, and Summons on Amendment issued. May 20, 1940. Notice of Motion to substitute the Bamberger Coal Company in place and stead of Simon Bamberger, deceased, filed. June 3, 1940. Summons returned served on Dr. Leslie J. Paul, personally, and on Bamberger Coal Company by serving Wm. D. Eldridge, Vice President, on May 22nd, on Dr. Frederick Taylor, personally, May 28th, filed. June 10, 1940. Hearing on motion to substitute the Bamberger Coal Company. Motion called and no Opposition. No Appearance for the defendant. Decision reserved. (Walker). July 1, 1940. Motion and Notice of Motion for leave to amend prayer for relief filed. July 1, 1940. Motion and Notice of Motion for default judgment filed. July 8, 1940. July 8, 1940. Hearing on motion for leave to amend prayer for relief. Hearing on motion for entry of Default Judgment. Decision reserved.

B.

STATEMENT OF THE QUESTIONS INVOLVED.

(a). See those which are set out on pp. 1 to 7 of the Brief to the C. C. A. Third Circuit which is annexed hereto and made a part hereof.

(b). Your petitioner, without any fault of his own, has been singled out and severely dealt with by several State

Courts as well as several United States Courts, and, with the exception of three or four instances, has been denied civil rights ever since the year 1913, or thereabout. See the Exhibits certified by the proper authorities and sent up by the Clerk of the Circuit Court of Appeals Third Circuit. See Beals vs. Curtis, Box Elder County, Utah, certified copy of the Proceedings had in the case on file in the Clerk's Office of the United States District Court District of New Jersey; Curtis vs. Zavitsanos, District Court of Salt Lake County, Utah. By reason of the denial of civil rights a gigantic conspiracy is and has been flourishing and each one court, federal and state, decline jurisdiction. Under cover of these practices the conspiracy flourishes and the conspirators multiply. (See the Exhibits.)

C.

STATEMENT OF FACTS.

The same Statement of Facts set out on pp. 12 to 17 of the Brief to the C. C. A. 3rd C.

D.

The United States District Court for the District of New Jersey has the said conspiracy before it ever since the 7th day of February 1927, in eight cases and in addition thereto, in a Bankruptcy proceeding in the matter of the Eldorado, Inc. Bankrupt, a claim for wages against said Bankrupt. (See page 7 of your petitioner's first Petition for Writ of Certiorari. See also pp. 3-4 of the Brief to the C. C. A. 3rd C.) In each and every one of said cases the said federal court declined jurisdiction of the conspiracy and under one excuse and the other dismissed each and every one of

said cases. The claim against the said Bankrupt is an exception. This said claim was dismissed the first time made. The second time made the attorneys appearing for other claimants provided room for your petitioner to corner the attorney of the said Bankrupt and thus saved his claim.

E.

The said conspiracy was brought up to before the Circuit Court of Appeals for the Third Circuit five times in five different cases. (See Cases Numbered 4193, 4194, 6468, 7525, and 8027.) This said Circuit Court of Appeals for the Third Circuit, in all said five cases summarily and in short and brief decisions declined jurisdiction thus denying to your petitioner civil rights thereby forcing upon your petitioner severe and martyric conditions. In the case pending (No. 728 U. S. D. Ct. D. of N. J.) the District Court assumed jurisdiction of the claim on contract and declines jurisdiction of the Counts in Conspiracy which Counts set forth and contain particular acts of the said conspiracy and name as defendants certain person who participated in the same thereof. (See the Exhibits.)

F.

In the course of the hearings had before the District Court (A. above) it was made to appear to your petitioner that the district Judge Thomas Glynn Walker was determined to destroy the suit and jail your petitioner, and in one of said hearings the said District Judge directed the Deputy Marshal who was attending the Court to arrest your petitioner. The said Deputy Marshal demurred to said orders and asked the said Judge: What for? The said

Judge answered: For Acting like that. Then the said Deputy Marshal answered unto said Judge: He cannot be arrested for taking care of his case. In order to take care and save his case your petitioner on the 19th day of August, 1940, filed a Notice of Appeal appealing his case to the said Circuit Court of Appeals for the Third Circuit. (See case numbered 6468.) Oct. 2, 1940, Brief for Appellant filed. Oct. 19, 1940, Brief for Appellees filed. Nov. 1, 1940, Reply Brief for Appellant filed. Nov. 7, 1940, Argued. Coram, Biggs, Maris and Goodrich, J.J. Dec. 14, 1940, Opinion per Curiam filed. May 15, 1941, Mandate issued directing the District Court to proceed according to right and justice and the laws of the United States.

G.

June 11, 1941. Notice of Motion and Affidavit thereto for permission to submit Affidavit and Exhibits in Opposition to Motions to Dismiss filed. June 23, 1941. Hearing on motion for permission to submit said Affidavit and Exhibits named therein. Appearance: Plaintiff in person. In Opposition: H. Collin Minton, Jr., for himself, Utah Fuel Company and for those for whom he filed the Special Appearance. Plaintiff submitted his motion and moved to submit his exhibits. Motion to submit the exhibits granted, and exhibits submitted by the plaintiff and received by the Court. Mrs. Bergen, Court Stenographer, took down the dictations of Judge Thomas Glynn Walker consisting of brief description of each exhibit. Decision Reserved (Walker). (These Motion Papers and Affidavit are photostated with the exhibits and constitute a part of the photostated record. See them there.)

H.

August 15, 1941. Notice of Motion for Leave to file 2nd Supplemental Bill of Complaint filed. August 25, 1941. Hearing on motion for leave to file 2nd supplemental bill of complaint adding parties defendants. Your petitioner appeared for the motion and explained to the Court the loss of his envelope containing his motion papers and moved the court to postpone the hearing of the motion to obtain copy from Clerk's Office. Motion to postpone the hearing denied and motion for leave to file 2nd supplemental Complaint dismissed. (Smith).

I.

November 19, 1941. Memorandum of Findings of Fact and Conclusions of Law, filed. (Walker). November 25, 1941. Order quashing service of Summons on Carol C. Johnson, filed. November 28, 1941. Order striking service of summons as to Nicholas J. Pappas, Helen N. Pappas, Harry Sussman (not served; out of district; in hiding) and William V. Rosenkrans, filed. The said Memorandum of Findings of Fact and Conclusions of Law is set out on pp. 17a to 22a of the Appendix of the Brief. The said Order in favor of Carol C. Johnson is set out on page 24a and notice of its entry on page 23a of the Appendix. The said Order in favor of Nicholas J. Pappas, Helen N. Pappas, Harry Sussman, and William V. Rosenkrans is set out on pages 25a-26a of the Appendix of the Brief. The District Court is bound to determine all the issues in the case. Interstate Circuit et al. v. United States. Per Curiam. Opinion of the Court, 304 U. S. on page 55. Decree in 20 F. Supp. 868. In this case the District Court failed to do so. It left

five Counts unconsidered. See Argument XXVII, page 94; XXV, pages 91-92; XXIV, pages 90-91 of the Brief to the C. C. A. 3rd C. The District Court declined to proceed in accordance with the Articles of the Constitution and Laws of the United States cited above in the Caption, material parts of which are set out on pages 2a-16a, with Notes of Decisions thereon.

J.

That thereafter and on the 23rd day of January, 1942, your petitioner applied to the United States Circuit Court of Appeals for the Third Circuit for a Writ of Mandamus commanding Judge Thomas Glynn Walker and Judge William F. Smith to proceed and assume and exercise, and carry into effect the powers, authorities and jurisdiction of the Court as conferred upon it by the United States Constitution and those Acts of Congress cited on page 3 (a) and (b) of the Complaint; as well as the several laws which are to be found in the several sections of Title 18 U. S. C. A. cited and referred to above; and quoted in the Appendix of this Petition and Supporting Brief hereto annexed; and more particularly the laws found in Sections 43 and 47 (of Title 8). On behalf of brevity see the full text of the prayer on pages 28-29 of the Original typed Petition which has been sent up as an Exhibit.

That the said petition for Writ of Mandamus was brought up to be heard and argued by your petitioner by motion before the United States Circuit Court of Appeals for the Third Circuit, on the (see Docket Entries) and was then submitted to the Court by your petitioner as there was no one appearing in opposition, and the same was taken by the Court under advisement; and on April 30, 1942 the said circuit court entered its Opinion dismissing the

Petition for lack of jurisdiction. The Opinion is set out in full on page 36a of the Appendix of the Brief to C. C. A.

K.

Title 28, U. S. C. A. Sec. 225 (Judicial Code, Section 127) Appellate Jurisdiction. (a) Review of Final Decisions.

The Circuit Courts of Appeal shall have appellate jurisdiction to review by appeal final decisions. First. In the district courts, in all cases save where a direct review of the decision may be had in the Supreme Court under Section 345 of this title. Mar. 3, 1911, c. 517, Sec. 6, 26 Stat. 828; Mar. 3, 1911, c. 231, Sec. 128, 36 Stat. 1133; Jan. 28, 1915, c. 22, Sec. 2, 38 Stat. 803; Feb. 7, 1925, c. 150, 43 Stat. 813; Feb. 13, 1925, c. 229, Sec. 1, 43 Stat. 936; May 17, 1932, c. 190, 47 Stat. 158; and Aug. 23, 1935, c. 614, Sec. 223 (c), 49 Stat. 704; Federal Rules of Civil Procedure. Rule 73, following Sec. 723c of this Title.

The Orders setting aside the services of summonses are in the nature of a final judgment and are therefore immediately appealable. Pleading and Practice in New Jersey, Harris, Sec. 272, citing: Sweeny v. Miner, 88 N. J. L. 361, 96 A. 1014. See XXVI pages 92-93 of the Brief to C. C. A. 3rd C.; in Tomlinson v. Armour, 75 N. J. L. 748, it was held that a judgment in favor of either party upon demurrer (motion) to a declaration is a final judgment reviewable in error, citing Hale v. Lawrence, 22 Id. (N. J. L. 2 Zab. 72, 80); in State v. Pennsylvania Steel Co., 123 Md. 212, an order quashing the return to a summons, . . . is a final order from which an appeal can be taken; 3 Corp. Jur. 483 and cases there cited. Rule 52a of the Federal Rules of Civil Procedure.

There should be a fair compliance with rule 52 (a) of the rules of civil procedure, 28 U. S. C. A. following Section

723 c. Ruberts, J. in Mayo v. Lakeland Highlands Canning Co., 309 U. S. 521, 60 S. C. 521. (3) . . . Such findings are obviously necessary to the intelligent and orderly presentation and proper disposition of an appeal.

(4) The record does not warrant a judgment of dismissal. The Complaint raises constitutional questions of due process, equal protection, and violation of the obligation of contract; conclusiveness of the Findings of Fact and Conclusions of Law by the District Court. National Reserve Ins. Co. v. Scuder, 71 F. 2d. 884; Railroad Commission v. Maxcy, 281 U. S. 82, 83, 74 L. Ed. 716; Cherry-Vurrele Co. v. Thatcher, 107 F. 2d. (8) on page 69; Storley v. Armour & Co., 107 F. 2d. 499, citing H. H. Cross Co. v. Simons, 8 Cir., 96 F. 2d. 482, 486; Crowell v. Baker Oil Tools, 9 Cri., 99 F. 2d. 574, 577; Healy C. J. in Occidental Life Ins. Co. v. Thomas, 107 F. 2d. 875; Green Valley Creamery v. U. S., 108 F. 2d. 342, (7) on p. 347; U. S. v. Borg-Waren Corporation, 108 F. 2d. 424, (4) on p. 427; C. C. A. 7th 1939); American Home Fire Assur. Co. v. Hargrove, 109 F. 2d. 86; Nicholas v. Minnesota Mining & Manufacturing Co. (C. C. A. 4th) 109 F. 2d. 162 (1) on p. 163; Gray McFawn & Co. v. Hegarty, Conroy & Co. Inc. et al. (C. C. A. 2d.* 109 F. 2d. 443 (3); Kurn et al. v. Beasley County Judge, C. C. A. 8th C.) 109 F. 2d. 687 (3); Gray v. United States, (C. C. A. 8th C.) 109 F. 2d. 728; Pullman Co. v. Chicago & N. W. R. Co., (C. C. A. 7th) 110 F. 2d. 425, (1) (2); Syracuse Engineering Co. v. Haight, 110 F. 2d. 468, (6); City of Sumter et al. v. Spur Distributing Co., C. C. A. 4th, Mar. 15 1940, 110 F. 2d. 649 (1, 2); Goodacre v. Panagopoulos et als., C. C. A. D. of C., 110 F. 2d. 716, (1), (2); Creel v. Hudspeth, Warden, C. C. A. 10th C. Mar. 21, 1040, 110 F. 2d. 762, (4) on p. 763; Pers v. Hudspeth Warden C. C. A. 10th C. Mar. 21, 1040, 110 F. 2d. 812, (1), (5); Arenstien v. American Soc. of Com-

posers, Authors and Publishers et al., D. C. S. D. of N. Y., 29 Fed. Supp. 388, (10), (11); Central R. Co. of New Jersey v. Central Hanover Bank & Trust Co. et al., 29 F. Supp. 826, (3). Under Civil Procedure Rule relating to findings by Court formal findings of fact and conclusions of law separately stated take place of opinion written by Court on the facts or law in an injury cause or proceeding; Clark Bros. Co. v. Portex Oil Co. C. C. A. 9th, 113 F. 2d. 45 (4) on p. 47; Continental Oil Co. v. Jones, C. C. A. 10th C., 113 Fed. 2d. 557, (6); Atlas Beverage Co. et al. v. Minneapolis Brewing Co., C. C. A. 8th, 113 F. 2d. 672, (6); Bein Co. v. Landy, Collector of Internal Revenue, C. C. A. 8th, 113 F. 2d. 897, (1); Mississippi Valley Timber Co. v. Mengel Co. et al., C. C. A. 5th C., 112 F. 2d. 947; Hays v. Kelly et Ux., C. C. A. 9th C. 112 F. 2d. 897, (1); Sevens v. Edwards et al., C. C. A. 5th C. 112 F. 2d 534, (3); Edwards v. Lain, C. C. A. 7th C. 112 F. 2d. 343, (2); In re Mount Holly Paper Co. v. Davis et ux., C. C. A. 3rd C.; Automobile Ins. Co. of Hartford Conn. v. Springfield Dyeing Co. Inc., C. C. A. 3rd. C. Feb. 1940; Samuel White v. James A. Johnston, No. 697, 313 U. S. 538, 85 L. E. 1507, 61 S. Ct. 834; Ford Motor Co. v. Nat. Labor Relations Board, 205 U. S. 364 Oil Shares Incorporated v. Commercial Trust Co. et al., 304 U. S. 551; Federal Circuit Court of Appeals must follow decisions of other such federal courts. McConald v. U. S. (C. C. A. Minn. 1937) 89 F. 2d. 128, cer. denied. 1937, 57 S. Ct. 925, 301 U. S. 697, 81 L. Ed. 1352, rehearing denied 1937, 58 S. Ct. 4, 302 U. S. 773, 82 L. Ed. 599.

L.

Case No. 8027. That theretofore and on the 8th day of May, 1942, your petitioner filed his notice of Appeal. Petition to extend time to file Appellant's Brief filed May 29,

1942. Order extending time for filing Appellant's Brief to Aug. 1942 filed. July 6, 1942. Brief for Appellant and Appendix filed. Proof of service of Appellant's Brief filed July 30, 1942. August 31, 1942. Certified copy of Exhibits filed. September 22, 1942. Memorandum of Appellees filed. Praecipe for appearance of Grover A. Ciles and Zar E. Hays for Appellees filed. Oct. 6, 1942. Notice of Motion and Motion to Strike the Memorandum of Appellees filed. October 15, 1942 Second Memorandum of Appellees filed. October 20, 1942. Memorandum of Appellant in support of motion to strike memorandum of Appellees filed Proceedings of June 10, 1940, before Judge Walker filed. Certified photostated copies of certain exhibits and papers filed. List of Index of Exhibits filed. October 22, 1942. Argued. Coram. Maris, Jones, and Goodrich, JJ. Order denying two motions of your petitioner to strike two Memorandums therein filed by certain of the appellees filed. The Order is annexed to this Petition and made a part hereof. December 7, 1942. Opinion. Per Curiam, filed. Order Affirming Order appealed from filed. A copy of the said Opinion is annexed to this Petition and made a part hereof..

M. JURISDICTION.

(a) The said Opinion of the Circuit Court of Appeals for the Third Circuit is a final decision and is subject to review by the Supreme Court of the United States upon Certiorari as provided in Section 347 of Tit. 28 U. S. C. A.

(b) This court has jurisdiction to consider and grant this petition pursuant to Chap. 9, Section 347 of Title 28, U. S. C. A.

(c) It is competent for the Supreme Court of the United States, upon the petition of any party thereto whether Government or other litigant, to require by certiorari, either before or after judgment or decree of the Circuit Court of Appeals, that the cause be certified to this Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal. Chapter 9, Sec. 347 (a) of Title 28 U. S. C. A.; (Mar. 3, 1891, c. 717, Sec. 6, 26 Stat. 828; Mar. 3, 1911, c. 231, Sec. 240, 36 Stat. 1157; Feb. 13, 1925, c. 229, Sec. 1, 43 Stat. 938.

(d) This Court may by certiorari direct any case to be certified. Lauow Bew v. United States, 12 S. Ct. 517, 144 U. S. 47, 36 L. Ed. 340; Azter Min. Co. v. Ripley, 14 S. Ct. 236, 151 U. S. 79, 38 L. Ed. 80; Forsyth v. City of Hammond, 17 S. Ct. 665, 166 U. S. 506, 41 L. Ed. 1095; Title Guaranty & Surety Co. v. U. S. to the use of General Electric Co., 32 S. Ct. 168, 222 U. S. 401, 56 L. Ed. 248.

(e) In the case of Interstate Circuit et al. v. United States, 304 U. S. on page 55, 1, by a Per Curiam Opinion, in substance, this Court held that the District Court is bound to determine all the issues in the case. In the instant case the District Court refused to do so.

(f) The Federal Circuit Court of Appeals for the Third Circuit must follow the decisions of other such Federal Courts. McDonald v. United States (C. C. A. Minn. 1937), 89 F. (2nd) 128, certiorari denied, 57 S. Ct. 925, 301 U. S. 697, 81 L. Ed. 1352, rehearing denied, 1937, 58 S. Ct. 4, 302 U. S. 773, 82 L. Ed. 599. In the instant case the Circuit Court of Appeals for the Third Circuit refused to follow even its own decisions.

N. QUESTIONS PRESENTED.

Q. 1st: Whether the provisions of Official Form No. 2 (Allegations of Jurisdiction. Rule 84 Fed. Rules of Civil Procedure) as it is set out on pp. 106-107 were complied with with respect to the allegations of jurisdiction of the Federal District Court for the District of New Jersey.

Q. 2nd: Whether the application made by your petitioner to the court for the issuance and service of summons upon the non-resident defendants as set out on the caption of the Complaint on pages 1-2, is a proper application serving the requirements of the Rules of Civil Procedure.

Q. 3rd: Whether the defendants named in the suit, by their own acts changed the nature of the suit from an action on contract and under the Industrial Act of the State of Utah, to an action in trespass on the case in conspiracy.

Q. 4th: Whether the complaint, pleadings filed thereto, and exhibits submitted raise questions of due process, equal protection, equal benefits of all laws and proceedings, deprivation of the writ of Habeas Corpus, deprivation of Civil Rights, and violation of the obligation of contract.

Q. 5th: Whether the defendants in the suit were properly joined as parties defendant.

Q. 6th: Whether Section 729 of Title 28, U. S. C. A. is specially designated in the Code of Laws of the United States for the protection and vindication of civil rights of citizens and of all other persons within the jurisdiction of the United States; and whether it governs the procedure which was followed in the instant case.

Q. 7th: Whether the defendants named in the complaint, in the prosecution and carrying on of the conspiracy set forth in the Complaint and Exhibits submitted thereto, have committed any offense against the laws of the United States,

thereby bringing or placing themselves within the Provisions of the Articles of the United States Constitution and Laws of the United States which are cited on the Caption of this Petition and quoted in the Appendix of the Brief to the C. C. A. 3rd. C., pages 2a-16a; see citations on the 6th and 7th pages of the Brief to C. C. A. 3rd. C.

Q. 8th: Whether the Complaint, pleadings thereto, and Exhibits submitted in support of the same thereof state a cause of action for treble damages under the Anti Trust laws of the United States. See citations on the unnumbered 5th and 6th page of the Brief to C. C. A. 3rd. C.

Q. 9th: Whether the law found in Section 103 of Title 28, U. S. C. A. is a law specially enacted to deal with, inquire of, try, determine, and punish offenses against the United States which begun in one judicial district and continue in several other districts; and whether, under the state of facts of the instant case, the instant case is one which begun in the District of Utah and continued in several other districts and feverishly and openly prosecuted in the District of New Jersey and the District of Pennsylvania.

Q. 10th: Whether, under the state of facts, the allegations in the Complaint and pleadings thereto, and the evidence set out in your petitioner's Exhibits; the Articles of Incorporation of the principal defendant, Utah Fuel Company, its residence in the District of New Jersey; and the fact that the conspiracy is operated from its headquarters located in Jersey City, N. J., the defendants have placed themselves within and under the provisions of the 6th Amendment of the United States Constitution.

Q. 11th: Whether the 6th Amendment to the United States Constitution requires your petitioner to go from state to state and separately institute suits against those of the defendants residing therein while the said principal defen-

dant, a procuror, would be residing in the District of New Jersey.

Q. 12th: Whether there will be a failure of justice if your petitioner proceeds to trial on the Memorandum Opinion of Judge Thomas Glynn Walker.

Q. 13th: Whether the District Court of the United States in the instant case has abandoned its jurisdiction already properly obtained of the instant suit; and whether the Circuit Court of Appeals 3rd Circuit sanctioned the abandonment of the instant suit, thereby destroying the conspiracy parts of the suit and leaving the conspiracy to flourish.

Q. 14th: Whether the failure of the District Judge to find specially the facts and base his conclusions of law of his ruling on Motion numbered No. 4 on Counts 23rd and 24th constitute a violation of the provisions of Federal Rule 52 (a) of the Federal Rules of Civil Procedure; and whether he deliberately and intentionally formed his ruling to destroy the character and conspiracy parts of the instant suit.

Q. 15th: Whether the suit at hand is governed by the "inhibition" of the Act of the Forty-Ninth Congress. Sess. II, Chap. 137, March 3, 1887, Sec. 1, . . . and no civil suit shall be brought before either of said courts (Circuit and District) against any person by any original process of proceeding in any other district than that whereof he is an inhabitant; . . . ; or it is a suit within the exceptions enacted as Section 5 of said Act and is governed by the law of this Court construed in the case of Tennessee v. Union & Planters Bank, 152 U. S. 511, 36 L. Ed. 511, 14 S. Ct. R. 954 and cases cited therein and cases in point.

Q. 16th: Whether in suits brought under the authority of the Articles of the Constitution and Laws of the United States cited in the Caption of this Petition above; on page 3 of the Complaint; and quoted in the Appendix of the Brief to the C. C. A. 3rd C. as annexed hereto and made a part

hereof, the sum or value of the amount in dispute must exceed, exclusive of interest and costs, the sum or value of $3,000.00, or whether the instant suit is governed by the law laid down by this Court in (27) of the case of Hague vs. The Committee of Industrial Organization, 307 U. S. 495, et seq. 83 L. Ed. 1532; (see the par. on pages 38-41 of the Brief to C. C. A. 3rd. C.) and subdivisions (1) last sentence, (2) Crimes and Offenses; (12) Suits Concerning Civil Rights; (14) suits to redress deprivation of civil rights; (17) suits by aliens for torts; (23) suits against trusts, monopolies and unlawful combinations, of Section 41 of Title 28, U. S. C. A. See the several subdivisions which are set out on pp. 23-26 of the Brief to the C. C. A. 3rd C. which is annexed hereto and made a part hereof. (Ruling on Motion No. 1.)

Q. 17th: Whether, in so far as the instant cause is concerned, the District Court departed from the accepted and usual course of judicial proceedings; and, in so far, the Circuit Court of Appeals for the Third Circuit repeatedly sanctioned such departure by the District Court, thus leaving the conspiracy set forth in the Complaint and Exhibits submitted, to be carried on contrary to the safety of the public and in violation of their public policy and to the wrong and injuries of your petitioner.

Q. 18th: Whether the Circuit Court of Appeals for the Third Circuit, in affirming the Opinion of the District Court, has disregarded the several Constitutional Questions, as well as several questions of Federal law, governed by the Articles of the United States Constitution and sections of the Federal laws cited above in the Caption of this Petition, in the Printed Complaint and the Brief to C. C. A. 3rd C. as annexed hereto, in conflict with applicable decisions of this Court; of the same Circuit Court; of all the other Cir-

cuit Courts of Appeal; and of the District Court of the United States for the District of New Jersey.

Q. 19th: Whether the District Court has disregarded several important questions of general Federal laws in conflict with the weight of authority; and whether the Circuit Court of Appeals for the Third Circuit has had sanctioned such departure thus leaving the conspiracy to be carried on contrary to the interest of the public.

Q. 20th: Whether the principles of "res judicata" may be invoked to sustain fraud and a judgment obtained by fraud, collusion, perjuries, concerted action by the defendants in the instant suit, and the introduction of a copy of an Application for a Writ of Mandamus, made by your petitioner to this Court in October Term, 1919, the filing of which was obstructed up to the October Term, 1925, or thereabout (the records have been destroyed several times; see the records of this Court); and whether the District Court have had severely dealt with the instant suit of your petitioner in order to destroy the character and nature of the suit; and whether the Circuit Court of Appeals for the Third Circuit sanctioned such and such conduct and rulings of the District Court.

Q. 21st: Whether the Notice of Motion, Motion and Affidavit for leave to submit affidavits and exhibits in opposition to the motions to dismiss the instant suit, the appearance of H. Collin Minton, Jr., for himself and as counsel for several defendants, the hearing of the Motion without any objection made in open court on a regular motion day, and the submission of the Exhibits to the Court by your petitioner satisfied the requirements of Federal Rule 6, Time, Federal Rules of Civil Procedure; Federal Rule 43, (e) Evidence on Motions; Federal Rule 44, Proof of Official Records, (a) and (c); and Federal Rule 10, (c) Adoption by Reference, Exhibits; and whether the District Court in

stating: Motion No. 5. The plaintiff moved to submit affidavits and exhibits in opposition to the motion to dismiss. The Court, however, was unable to consider same because the plaintiff did not give notice of said motion as required by the Rules.—has not falsified the facts and the records of the proceedings had in order to severely deal with the conspiracy; and whether the said Circuit Court of Appeals for the Third Circuit has sanctioned such mal-judicial practice. (The Notice of Motion, Motion and Affidavits thereto and Exhibits mentioned therein have been photostated and filed in the Office of the Clerk of the Circuit Court of Appeals Third Circuit showing: (a) Receipts of registered mail; (b) name of the person mailed to; (c) the Notice of Motion; (d) Motion; (e) Affidavit; (f) short digest of the Exhibits; (g) Memorandum of plaintiff to each exhibit submitted.)

Q. 22nd: Whether the defendants in the District Court are presumed to have had due and timely notice of the entry of the Memorandum Opinion of the District Judge; whether they have had a right to appeal therefrom to the Circuit Court of Appeals for the Third Circuit; and were represented by several able counsels; and whether their failure to appeal extinguished their right to file pleas to the jurisdiction of the Circuit Court of Appeals, and pleas to dismiss the appeal. (Memorandums first and second.)

Q. 23rd: Whether your petitioner herein timely served counsels for appellees with the requisite number of copies of his Brief.

Q. 24th: Whether the failure of the appellees to proceed and file and serve copies of their brief in accordance with the provisions of paragraph 5, (a), (b), (c), (d), and (e) of rule 26, and par. 1 of rule 27 of the Rules of Practice and Procedure of the Circuit Court of Appeals, Third Circuit, extinguished their right to file any other pleading against the appeal of your petitioner in the instant appeal.

(No other briefs may be filed without special leave of the court. Last sentence of rule 27 of the Rules of Practice and Procedure of the C. C. A. 3rd. C.)

Q. 25th: Whether the two Memorandums filed and served to dismiss the appeals are irregular, defective, scandalous, prolix, and obscene, and were issued, filed, and served to corruptly obstruct and impede the due administration of justice by the use of the honor and privileges of the State of Utah while they have the true facts and the resident defendants in their hands, filed in the state courts and in the Federal Court for the District of Utah, thereby winning the sympathy of the Circuit Court of Appeals for the Third Circuit.

Q. 26th: And whether the District Court of the United States within and for the District of New Jersey is to be permitted to allow the criminal conspiracy set forth in the Complaint and Exhibits thereto to be carried on therein in said district as well as any other district of the United States, or of any other foreign country, against the safety of the public and their public policy thereof in order to protect the operations of the defendant, Utah Fuel Company and controlling and controlled and associated corporations.

O. REASONS FOR GRANTING THE WRIT:

First: The Circuit Court of Appeals for the Third Circuit in affirming the Order of the District Court simply divested itself of the jurisdiction it possesses.

Second: The Circuit Court of Appeals for the Third Circuit in affirming the Order of the District Court has laid down a rule which is in conflict with the rules established and followed by the same court in all its reported cases:

(a) Vacuum Oil Co. v. Eagle Oil Company, 154 Fed. 867, decree affirmed. Eagle Oil Company of New York v. Vacuum Oil Company, 162 F. 671, 89 C. C. A. 463, certiorari denied, 29 S. Ct. 696, 214 U. S. 515, 53 L. Ed. 1063. On page 875 of 154 Fed. Rep. this Court says:

"But while the action is founded upon fraud, it is also of transitory character, and the fact that some of the fraudulent acts were committed outside the jurisdiction of this court and outside of the United States will not avail the defendants. McKenna v. Fisk, 1 How. 241, 247, 248, 11 11 L. Ed. 117; Mitchel v. Harmony, 13 How. 115, 157, 14 L. Ed. 75; Dennick v. Central R. R. Co., 103 U. S. 11, 18, 26 L. Ed. 43".

(b) United States vs. Silverman, 106 Fed. 2nd. 75. See parts of the Decision written by Judge Clark on pp. 19-20 of the Brief to the C. C. A. 3rd C. To the same effect all the cases cited on pages 20-21 of said brief.

(c) Calahan vs. United States, 53 Fed. 2d. 467. See parts of the decision on page 33 of said brief to C. C. A. 3rd. C.

(d) See also the cases of the same court and from the same District cited in paragraph 5 on page 20 of said brief.

(e) There is no exception to be found in the reported cases of the said C. C. A. 3rd. C. It simply joined issue in singling your petitioner out leaving him to face the infernal conspiracy of the defendants.

Third: The Circuit Court of Appeals for the Third Circuit in affirming the Order of the District Court has laid down a rule which is in conflict with the rules established by the said District Court.

United States vs. Jackobson, et al. 34 Fed. Supp. 215. See par. 7 on page 67 of the brief to C. C. A. 3rd. C. as annexed hereto and a part hereof.

Fourth: The reasons given by the District Court are suppressive tending to suppress the administration of justice as against the defendants in the instant suit thereby destroying your petitioner's causes of action which are set forth in the several counts of the conspiracy parts of the Complaint and leaving the conspiracy to be carried on to its final objective.

Fifth: The reasons announced by the District Court disregard the provisions of the Articles of the United States Constitution and Acts of Congress set forth in the Caption of this Petition, and which Congress specifically said should govern the methods of procedure in arriving at a reasonable adjudication of every case before the bar.

Sixth: These regulations have been consistently followed since the establishment of the courts of the United States, and are UNANIMOUSLY ACCEPTED BY THE PUBLIC.

Continental Illinois Nat. Bank & T. Co. v. Chicago, etc. Co., 55 S. Ct. 23, 293 U. S. 58, 79 L. Ed. 197;

Wilder vs. United States, 27 Sup. Ct. 787, 204 U. S. 674, 51 L. Ed. 674; Mitchel v. Greenough, 59 S. Ct. 788, 306 U. S. 659, 83 L. Ed. 1056.

U. S. vs. Kissel, 31 Sup. Ct. 124, 126, 218 U. S. 606, 54 L. Ed. 1168;

In re Palliser, 136 U. S. 257, 262, 10 Sup. Ct. 1034, 34 L. Ed. 514;

Horner v. U. S., 143 U. S. 207, 12 Sup. Ct. 407, 36 L. Ed. 126;

Burton v. U. S., 202 U. S. 344, 381 et seq., 26 Sup. Ct. 688, 50 L. Ed. 1057; Hyde v. U. S., 225 U. S. 347 et seq.;

Lamar v. U. S., 240 U. S. 60, 36 Sup. Ct. 255, 60 L. Ed. 526;

United States vs. Fullheart quoting from Re Subold, 100 U. S. 871 on p. 895; Hyde vs. Shine, 199 U. S. 62, 25 S. Ct. 760, 5 L. Ed. 90;

Haas v. Henkel, 216 U. S. 462, 30 S. Ct. 249, 54 L. Ed. 569, 17 Ann. Cas. 1112; Grayson v. United States, 272 F. 553; Grigg v. Bolton, 53 F. 2d. 158; U. S. v. Freeman, 239 U. S. 117, 36 S. Ct. 30, 60 L. Ed. 172; U. S. v. Alaska Cons. Canneries, 2 F. 2d. 614; Putnam v. U. S. 162 U. S. 687, 708, 16 S. Ct. 923, 40 L. Ed. 1118;

Benson v. Henkel, 198 U. S. 1, 25 S. Ct. 569, 49 L. Ed. 919;

In Re Palliser, 136 U. S. 257, 10 S. Ct. 1034, 34 L. Ed. 514;

U. S. v. Lombardo, 241 U. S. 73, 77, 36 S. Ct. 508, 510, 60 L. Ed. 897;

(377 U. S. C. A. 28)

Federal Power Co'n v. Metropolitan Edison Co., 58 S. Ct. 963, 304 U. S. 375, 82 L. Ed. 1408;

In re 620 Church Street Bldg. Corp. et al. 57 S. Ct. 88, 299 U. S. 24, 81 L. Ed. 16;

Steelman v. All Continent Corporation, 57 S. Ct. 705, 301 U. S. 278, 81 L. Ed. 1083; Julian v. Central Trust Co., 193 U. S. 93, 112, 24 S. Ct. 399, 48 L. Ed. 629; North Laramie Land Co. v. Hoffman et al., 268 U. S. 276, 283, 45 S. Ct. 491, 494, 69 L. Ed. 953;

(Title 15 Sec's 1, 5, 15, 22, 24, 26)

People's Tobacco Company v. American Tobacco Company, 246 U. S. 79, 87, 38 S. Ct. 233, 62 L. Ed. 587, Ann. Cas. 1918 C. 537;

Gen. Inv. Co. v. Lake Shore Ra'wy, 260 U. S. 261, 279, 43 S. Ct. 106, 67 L. Ed. 244; Minnesota v. Northern Securities Co., 194 U. S. 48, 71, 24 S. Ct. 598, 48 L. Ed. 870; Wilder Manufacturing Co. v. Corn Product Refining Co., 236 U. S. 165, 174, 35 S. Ct. 398, 59 L. Ed. 520;

Paine Lumber Co. v. Neal, 244 U. S. 459, 471, 37 S. Ct. 718, 61 L. Ed. 1256; Geddes vs. Anaconda Mining Co., 254 U. S. 590, 593, 41 Sup. Ct. 206, 95 L. Ed. 425;

The decision is not in accord with the decisions of all other Circuit Courts of Appeals in the cases cited and set out above in this petition, as well as in the following cases:

Frey & Son v. Cudahy Packing Co., 228 Fed. 209;

Thomas v. United States, 156 Fed. 897, 84 C. C. A. 477;

Radin v. U. S., 189 Fed. 568, 111 C. C. A. 6;

Grayson v. U. S., 272 F. on p. 557, (8) U. S. v. Sanch, 7 Fed. 715; Rease v. U. S., C. C. A. 4th C., 99 Fed. 2d. 752, (5); Smith v. U. S., C. C. A. 9th C. 92 F. 2d. 460, (1-2); Fabacher v. U. S., C. C. A. 5th C., 84 F. 2d. 602, (5); U. S. v. Jordan, 22 F. 2d. 102 (2); Dealtry v. Posse School, Inc., C. C. A. 1st C. (1938) 100 F. 2d. 470 (1-2); Aetna Casualty & Surety Co. v. Yeats, C. C. A. 4th C., 99 F. 2d. 665, (6); In re Philadelphia & Reading Coal & Iron Co., 103 F. 2d. 901; Holmes v. Rowe, C. C. A. 9th C. 97 F. 2d. 537, (1-2); Hellawell v. Grafeld, 22 F. 2d. 765, (5); In re Diversey Bldg. Corporation, 86 F. 2d. 456, (1-3); Whittel v. Roche, 88 F. 2d. 366; Bethke v. Grayburg Oil Co., 89 F. 2d. 536; Lanning v. Osborne, 79 F. 657, 662; U. S. v. Van Dusen, C. C. A. 9th C., 78 F. 2d. 125; Shell Oil Co. v. District Court of U. S. N. Dist . . ., C. C. A. 9th, 70 F. 2d. 394; Mitchel v. Greenough, 100 F. 2d. 184; Rease v. U. S., 99 F. 2d. 753, C. C. A. 4th C.; Bridgeman v. U. S. 140 F. 577; U. S. v. Downey, 251 F. 366; Smith v. U. S., C. C. A. 9th C. 92 F. 2d. 460, (1-3); Hansen Packing Co. v. Armour & Co., 16 F. Supp. 784; Jeffrey-Nichols Motor Co. v. Hupp Motor Car Corp., C. C. A. 46 F. 2d. 623; William-

son v. Columbia Gas & Electric Corp., 27 F. Supp. 198, (4-6); Glen Coal Co. v. Dickinson Fuel Co., 72 F. 2d. 885; Murry v. Patrie, Fed. Cas. No. 967; Western Pocahontas Corporation v. Accord, 178 F. 843; John Gund Brewing Co. v. U. S. 204 F. 17, 122 C. C. A. 331; U. S. v. Philadelphia, etc. R. Co., 237 F. 292; U. S. v. John Kelso Co., 86 F. 304, 308.

Title 18, U. S. C. A. Sec. 550.

United States v. Falcone, et al., 311 U. S. 205, 85 L. Ed. 128, 61 S. Ct. 204. Mr. Justice Stone delivered the Opinion of the Court on page 208. It is said that he is, (guilty of conspiracy) either because his knowledge combined with his action makes him a participant in the agreement which is the conspiracy, or what is the same thing he is a principal in the conspiracy as an aider or abettor.

United States vs. Peoni, (C. C. A. 2d. C.) 100 F. 2d. 401;

Lambert v. United States, (C. C. A. 5th C.) 101 F. 2d. 960;

United States vs. Hodorowicz, 105 F. 2d. 218 (8), C. C. A. 7th;

United States vs. Silverman, 106 F. 2d. 150 (C. C. A. 3rd. C.);

United States vs. Bakes, (C. C. A. 7th C.) 107 F. 2d. 579;

Bakun vs. United States, 112 F. 2d. 633 (1), (C. C. A. 4th. C.);

United States vs. Yasser, (C. C. A. 3rd. C. 114 F. 2d. 558 (5);

United Cigar Whelan Corporation et al. vs. United States, 113 F. 2d. 340;

United States vs. Sall, (C. C. A. 3rd. C. 116 F. 2d. 745 (1), (2), (3), (4), (5), (6);

Eley vs. United States, (C. C. A. 6th. C.) 117 F. 2d. 526;

Federal Deposit Ins. Corp. v. Vest, (C. C. A. 6th.) 122 F. 2d. 765;

McNabb et al. v. United States, (C. C. A. 6th. C.) 125 F. 2d. 848;

United States vs. Johnson, 123 Fed. 2d. 111 (35), (36), (38);

Brickey v. United States, 123 F. 2d. 341;

United States vs. Cohn et al., (C. C. A. 2d. C.) 124 F. 2d. 164.

18 U. S. C. A. 231.

United States vs. Harris, 311 U. S. 292, 55 L. Ed. 196, 61 S. Ct. 217;

United States vs. Norris, 300 U. S. 564, 81 L. Ed. 808A, 37 S. Ct. 535;

American Ins. Co. v. Lucas, 38 F. Supp. 926;

Boehm v. United States, 123 F. 3d. 791 (1), (5) et seq. A leading authority;

Travis v. United States;

United States vs. Falone, 112 F. 2d. 894 (C. C. A. 2d. C.);

Behrle v. United States, C. C. A. D. C. 100 F. 2d. 714;

Lucks v. United States, C. C. A. 5th C. 100 F. 2d. 908 (C. C. A. 5th. C.);

United States v. Silverman, 106 F. 2d. 750;

Blackmon vs. United States, (C. C. A. 5th. C.) 108 F. 2d. 572.

Title 18 U. S. C. A. Sec. 232.

United States vs. Van Riper, (C. C. A. 2d. C.) 99 F. 2d. 816;

United States vs. Silverman, 106 F. 2d. 750;

United States vs. Perlstein, (C. C. A. 2d. C.) 126 F. 2d. 789. Certiorari denied May 4, 1942, 62 S. Ct. 1106, 86 L. Ed.;

Outlaw vs. United States, (C. C. A. 5th. C.) 81 F. 2d. 805.

See the above two sections on pages 12a-13a of brief to C. C. A.

Seventh: The decision of the Circuit Court of Appeals for the 3rd Circuit is contrary to the settled judicial practice of many years.

Eighth: Jurisdiction of the Conspiracy parts of the suit was wrongfully and unlawfully declined and refused by the federal District Court for the District of New Jersey in violation of the Articles of the United States Constitution and Acts of Congress cited above in the Caption of this Petition and set out or quoted on pages 2a et seq. of the appendix to the brief to C. C. A. 3rd C.

Title 28 U. S. C. A. Section 729.

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of chapter 3 of title 8, and title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law the common law, as modified and changed by the Constitution and statutes, of the state wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and if it is of criminal nature, in

the infliction of punishment on the party found guilty, (R. S. Sec.).

Ninth: The construction and application of section 729 of Title 28 U. S. C. A. is already before this Court in the following cases:

(a) State of Tennessee vs. Union Planters Bank, 152 U. S. on page 513 . . .

Mr. Justice Gray delivered the Opinion of the Court and says:

"The 3rd Article of the Constitution, (459) said Chief Justice Marshal, "enables the judicial department to receive jurisdiction to the full extent of the Constitution, laws and treaties of the United States, when any question respecting them shall assume such a form that the judicial power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law.

It then becomes a case, and the Constitution declares that the judicial power shall extend to all cases arising under the Constitution laws and treaties of the United States" and when a question to which the judicial power of the Union is extended by the Constitution forms an ingredient of the original cause, it is in the power of Congress to give the Circuit Courts (District Courts) jurisdiction of that cause, although other questions of fact or law may be involved in it.

But "the right of the plaintiff to sue cannot depend on the defense which the defendant may choose to set up. His right to sue is anterior to that defense and must depend on the state of things when the action is brought. The questions the case involves then, must determine its character, whether those questions be made in the cause or not", Osborn v. Bank of United States, 22 U. S. 9 Wheat.

738, 819, 824 (6:204, 223, 224.). In the last clause as the context shows the word "then" (although printed between commas) means "at the time". The earliest Act of Congress, which conferred on the Circuit Courts (district courts) of the United States general jurisdiction of suits of a civil nature, at common law or in equity, "arising under the Constitution or laws of the United States, or treaties under their authority," was the Act of March 3, 1875, chap. 137, 18 Stat. at L. 470. Under section one of that Act providing that those courts should have original cognizance of such suits, when the matter in dispute exceeded the sum or value of $500, their jurisdiction was exercised in cases in which the plaintiff's statement of his cause of action showed that he relied on some right under the Constitution or laws of the United States. Feibelman v. Packard, 109 U. S. 421, (27:984); Kansas Pac. R. Co. v. Atkinson T. & S. R. Co., 112 U. S. 414, (28:794); "New Orleans v. Houston, 119 (460) U. S. 265, (30:411) Bachrach vs. Morton, 132 U. S. 337 (33:377); Cooks vs. Avery, 147 U. S. 375 (37:209) . . . . On Page 515.

The same rule applies, more comprehensively, to the acts of 1887, 1888. In section 1, as thereby amended, the words giving original cognizance to the Circuit Court of the United States in this class of cases are the same as in the Act of 1875, except that the jurisdictional amount is fixed at $2000, and it is therefore essential to their jurisdiction that the plaintiff's declaration or bill should show that he asserts a right under the Constitution or laws of the United States. . . . The Acts of 1887 and 1888, indeed contain special provisions as to particular kinds of cases arising under the Constitution or laws of the United States. . . . By section 5, nothing in this Act is to repeal or affect any jurisdiction or right mentioned in sections 641, 642, 643, 722, or title 24 of the Revised Statutes, or the Act of March 1,

1875, chap. 114, all of which relate to suits concerning civil rights, and section 643; . . . or in the Act of March 3, 1875, chap. 137, sec. 8 which relates to Notice to absent defendants in suits to enforce or remove liens. The said section 5 of said Act is to be found in the Appendix of this petition. See it also on p. 1 of Memo. filed in C. C. A. 3rd C.

(b) The revision of the Acts of 1875, 1887, 1888 of the Sixty-First Congress, Sess. III, Ch. 231, 1911, Chap. two. District Courts—Jurisdiction. Sec. 24 provides:

Sec. 27. The District Courts shall have original jurisdiction as follows: First: Of all suits of civil nature at common law or in equity . . . ; or where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, . . . Provided, however, That the foregoing provision as to the sum or value of the matter in controversy (proviso. Exceptions.) shall not be construed to apply to any of the cases mentioned in the succeeding paragraph of this section. The paragraphs referred to are the subd. of section 41 of title 28 U. S. C. A. which are quoted on pages 23-26, par's. 8, 9, 10, 11, 12, and 13, of the brief to the C. C. A. 3rd C.

(c) Tennessee vs. Davis, 100 U. S. 257, 25 L. Ed. 648;

(d) Howard v. United States, (C. C. A.) 257 F. 986, 21 C. C. A. 586, 34 L. R. A. 500;

(e) Cagle v. U. S. (C. C. A. Tenn. 1925) 3 Fd. 2d 746;

(f) Myres v. U. S. (C. C. A. Tex. 1919) 256 F. 779;

(g) Lung v. U. S. (Cal. 1913) 218 F. 817, 134 C. C. A. 505;

(h) Bryant v. U. S. (C. C. A. Tex. 1919) 257 F. 378; Motion denied, 40 S. Ct. 117;

(i) McClendon v. U. S. (Mo. 1916) 229 F. 523, 143 C. C. A. 591;

(j) United States vs. Bopp, (D. C. Cal. 1919) 256 F. 779;

(k) Radford v. United States (Mass. 1904) 129 F. 49, 63 C. C. A. 491;

(l) Ex parte United States, 101 F. 2d 870. Material parts of the decision of this case in the Appendix of this Petition.

(m) United States vs. Thompson, 251 U. S. 407, 40 S. C. R. 289. Material parts of the decision are to be found in the appendix of this petition.

See also the statutes and citations of cases cited and set forth on pages 1-2-3 of the Memorandum filed by your petitioner against the Memorandums filed by the appellees.

(n) Turning to the Index of the CODE OF LAWS OF THE UNITED STATES, (from the 1925 Code) we find:

CIVIL RIGHTS.

Action for deprivation of rights form of action, p. 123, Sec. 43

Jurisdiction, p. 867, Sec. 41 (12-14)

Persons liable, p. 123, Sec. 43

Conspiracy, p. 124, Sec. 47 (1), (2), (3)

Criminal Prosecution for denial or abridgment, see Crimes and Offenses

Enforcement proceedings governed by Federal Statutes, p. 935, Sec. 729

Review of proceedings for denial of civil rights, p. 123, Sec. 46; Sec. 225, p. 906; Sec. 345, p. 906; Sec. 347, p. 906.

Tenth: The construction and application of Section 103 of Title 28 U. S. C. A., and Title 18 section 88 are already before this Court and before all the other Courts of the United States. See b. on page 56 of the brief. The two sections are set forth there as section 30, Chap. CLXIX (196), Sess. II, of Thirty-Ninth Congress. See the cases cited above in Reason Sixth herein on page 22.

(b) Statutes, definitions, authorities and citations in the construction and application of section 103 of title 28 U. S. C. A. see paragraph 17 on pages 28-29-30-31-32, subd. (a) to (j) of the brief to the C. C. A. 3rd C.

(c) As to the construction and application of section 88 of title 18 U. S. C. A. see the section in full on pages 7a-8a. See also the Notes thereunder from cases similar in character of the instant case on pp. 8a-12a. of the Appendix to the Brief.

(d) The construction and application of sections 43 and 47 of Title 8 U. S. C. A. is already before this Court in numerous cases including those cited and set forth in (XII) on pages 49-50, all of the foregoing statutes are exception to the inhibition of the Act of March 3, 1887-1888. See (XXII) page 83 of the brief to the C. C. A.

Eleventh: Those of the defendants who are residents of the State of Utah have the records and judicial proceedings and the records of their own acts for which they are sued in their hands and have first hand knowledge of the facts, acts and crimes with which they are charged. Their superior and principal defendant, Utah Fuel Company, is a citizen and resident of the district of New Jersey and has its headquarters in the city of Jersey City, State of New Jersey. They all are in constant communication with their said superior and principal defendant and they supply the headquarters of said principal defendant, its officers and agents, and counsels with all deceptive information leading to the defeat of the ends of justice and the due administration of the law by the courts, state and federal, here in New Jersey. And, instead of appearing in person and show cause or give any and all defenses which, if any they have, they may have, they retained the attorney general

and assistant attorney general, H. Collin Minton, Jr. from Trenton, N. J. and H. Brua Campbell, from Wall Street, New York, and directed them to file and they did file such and such pleadings as would impede, obstruct, and defeat the administration of justice and moved the Circuit Court of Appeals for the Third Circuit to dismiss the appeals and proceedings in the instant suit; knowing the truth of the facts charged against them to be as they are set forth in the Complaint and the Certified Exhibits.

All these practices and operations are carried on with their aiding, abetting, counselings, inducing or inducements and false certifications of infernal certificates by them executed. All these are completed upon their arrival here in New Jersey and accepted by the resident principal co-defendant and by it, its officers and agents and counsels carried into execution herein in the state of New Jersey; and the 6th Amendment to the United States Constitution provides that the defendants for their parts in the acts charged to them in the Complaint shall be tried where the crime shall have been committed.

Now, that the liability of the defendant Utah Fuel Company is settled by the Opinion of the District Court from which no appeal has been taken, section 103 of Title 28 U. S. C. A. governs the suit as to all of the defendants and it provides that they shall be tried here in the State where their acts are completed. The same conditions and operations have been carried on here in New Jersey ever since the year 1925, or thereabout. See the Record of the Exhibits. They should be held accordingly.

ASSIGNMENT OF ERRORS.

1. As to the Errors Assigned to the District Court the same are adopted here. See them on pages 95, 96, 97, and 98 of the Brief to the C. C. A. 3rd, which is also the brief to this petition.

2. The Circuit Court of Appeals for the Third Circuit wrongfully and unlawfully divested itself of the authority and duty to command the final determination of the entire controversy before it and before the district court; and to command the district court to do complete justice by adjusting all the rights involved in the instant suit before the Courts.

3. The Circuit Court of Appeals for the Third Circuit, in all the cases in which this petitioner was a petitioner or appellant, wrongfully and unlawfully divested itself of the authority and duty to command the District Court to proceed according to the right and justice and the laws of the United States, and do complete justice by adjusting all the rights involved therein. An exception to this said statement is the mandate issued to the District Court in the first appeal in the instant suit.

4. The Circuit Court of Appeals for the Third Circuit wrongfully and unlawfully dismissed the petitioner's Proceedings for Writ of Mandamus for the reasons more fully appearing in the said proceedings; and for the reason that the District Court wrongfully and unlawfully denied to this petitioner the equal protection of the laws and equal benefits of all laws and proceedings had before it for so many years while the State Courts are unable to do justice in the case by adjudging the conspiracy complained

of because of the federal jurisdiction being exclusive; thereby consuming the entire earnings of this petitioner for a period of (17) seventeen long years, or thereabout, of hard earned moneys; and thereby forcing unnecessary sufferings on this petitioner and jeopardizing his life.

5. The District Court wrongfully and unlawfully issued its Ruling on motion No. 1; and wrongfully and unlawfully struck out counts 21st and 22nd, for the reason that this petitioner in the Paterson, N. J. District Court was represented by competent counsels and the Oral Opinion of the District Judge, delivered in open court at the close of the argument of David Cohn of counsel for the petitioner, was to the effect that: This petitioner is a person unfit to be believed because of the proceedings had against him in the various parts of the United States; and that the United States of America conducted the prosecutions. There were not a single dollar recovered from the swindlers.

6. The District Court of the United States for the District of New Jersey wrongfully and unlawfully granted the motion of the defendants, Utah Fuel Company and H. Collin Minton, Jr., to strike the 23rd and 24th Counts of the Complaint; and wrongfully and unlawfully struck the same.

7. The Circuit Court of Appeals for the Third Circuit wrongfully and unlawfully permitted the defendant-appellees and their counsels to, after the expiration of their time to take an appeal; and after the expiration of their time to file their briefs in the instant case, file obscene and objectionable Memorandums to dismiss the appeals.

8. The Circuit Court of Appeals for the Third Circuit wrongfully and unlawfully denied the plaintiff-appellant's

two motions and Memorandum thereto to strike the said two Memorandums of the respondent-appellees and their attorneys; thereby renouncing its duty to command the determination of the entire controversy before it.

9. The Circuit Court of Appeals wrongfully and unlawfully affirmed the reasons given by the district court in striking out the Counts specified in para's. 5 and 6 above here in this assignment of errors.

The petitioner deems the following parts of the record to be necessary for the consideration of the Questions Presented and Errors Assigned, namely:

a. The requisite number of copies of the Complaint and index and exhibits annexed thereto in the same printed form as it was originally served upon the defendants and filed with the district court.

b. Motion No. 1 and Opposing Affidavit thereto just as the two pleadings were printed, filed and served in the first appeal. The respondents have copies of these pleadings served upon them and if they have none they may apply to this petitioner for copy or copies.

c. Motion No. 2 and Special Appearance thereto and petitioner's Opposing Affidavit thereto as filed and served as printed in the first appeal.

Motion No. 3 and petitioner's Opposing Affidavit thereto as filed and served. The respondent, Carol C. Johnson, No. 68 William Street, New York City, in the proceedings for writ of mandamus and the appeal in the instant case refused to accept copies send by Railway Express and mailed through the United States Post Office. For the said reasons no attempt will be made to serve him at this time. The Court may serve him with Notice of the filing

of the petition, exhibits and brief, and may advise this petitioner of the further steps to be by him taken.

e. The Notice of Motion and Motion for leave to file Second Supplemental Complaint and Supplemental Complaint annexed or attached thereto; and the Notice of Motion, Motion and Affidavit thereto for leave to submit the exhibits mentioned therein, have been photostated and are to be found in the photostated Record and some of the exhibits are attached to these said pleadings just as they were filed with the Circuit Court of Appeals for the Third Circuit. The petitioner will print any part or additional part or all of this said pleadings if this court has the pleasure to direct.

f. The photostated exhibits just as filed with the C. C. A. 3rd C, an index of which is attached to this petition.

g. The first and second Memorandums of the appellees as filed with the court and served upon this petitioner. These Memos. will be printed.

h. The petitioner's first and second motion and memorandum thereto to strike the said two Memorandums filed with the Court by the Appellees. These pleadings also will be printed.

While this cause may not be considered of great importance from the standpoint of the amount involved which is: (a) $6341.11 and three fold that amount on the first Count; (b) $951.65 and three fold that amount on the 21st and 22nd Counts; and (c) $100,000.00 and three fold that amount from all of the defendants on all the counts of the Complaint, the principles involved are of the gravest importance, because the, as the Record and Ex-

hibits show, contentions of your petitioner are that he has been deprived of rights guaranteed to him by the Articles of the United States Constitution and laws of the United States which are cited above in the Caption of this Petition.

Your petitioner presents herewith, as parts of his petition,

1. The Order of the Circuit Court of Appeals 3rd Circuit denying the appellant's two motions to strike the two Memorandums filed by the appellees.

2. The Opinion of the said circuit court of appeals 3rd circuit affirming the Order of the District Court.

3. The Index of the photostated parts of the Record and Exhibits.

4. The supplemental Index of the Exhibits which were excluded in the first photostating by either the photostater or some deputy clerk who had charge of the record.

5. Material parts of the decision of the cases of Ex Parte United States, 191 F. 2d 870; and United States vs. Wood, 299 U. S. 123, 57 Sup. Ct. 177, 81 L. Ed.; See also Patton vs. United States.

6. Supplemental Brief; And

7. Brief as filed in the C. C. A. 3rd Circuit. Arrangements have been made with the printers whereby they saved the type or composition of the type agreeing to reprint the brief and motions at less than ½ of the amount paid for the printing of the brief. The Court is prayed to infer in the circumstances. The petitioner will print

any other part of the proceedings or of the Record which part or parts this Court may have the pleasure to suggest.

Wherefore, your petitioner respectfully prays that a writ of Certiorari may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding the said Court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case therein entitled:

NICHOLAS J. CURTIS, Petitioner, vs. HONORABLE THOMAS GLYNN WALKER and HONORABLE WILLIAM F. SMITH, United States District Judges for the District of New Jersey, Respondents, and NICHOLAS J. CURTIS, Plaintiff-Appellant, vs. UTAH FUEL COMPANY, et als., Defendant-Appellees.	Case No. 7929. Petition for Writ of Mandamus. Case No. 8027. Appeal from the United States District Court District of New Jersey.

to the end that the said cases may be reviewed and determined by this court, or that your petitioner have such other and further relief or remedy in the premises as to this Court may seem appropriate and in conformity with the Articles of the United States Constitution and

Acts of Congress cited on the Caption of this Petition, and that the said judgment of the said Circuit Court of Appeals for the Third Circuit in the said case, and every part thereof, may be reversed by this Honorable Court.

Nicholas J. Curtis, LL. B.,
Petitioner Appearing in Person,
Post Office Box 972, Trenton, New Jersey.

VERIFICATION AND CERTIFICATE.

STATE OF NEW JERSEY,
COUNTY OF MERCER,
City of Trenton. } SS.

Nicholas J. Curtis, for himself, upon oath say: That he is a Bachelor of Laws. That he is the petitioner in the foregoing petition; the appellant in the Circuit Court of Appeals for the Third Circuit; and plaintiff in the Complaint in the District Court of the United States for the District of New Jersey; that he has prepared, drafted and typed the said petition and has personal knowledge of the matters and things therein set forth, and believe the same to be true.

Affiant further states that the said petition for writ of certiorari is prepared and filed in the utmost good faith, believing that the same is meritorious, and that said petition is not prepared and presented in order to be vexatious or to delay the final opinion and judgment in the case.

Nicholas J. Curtis,
Affiant and Petitioner,
Post Office Box 972, Trenton, New Jersey.

Subscribed and sworn to before me this 8th DAY OF FEBRUARY, A. D., 1943.

S. R. BLOCK
Notary Public, Mercer County,
State of New Jersey.

IN THE
SUPREME COURT OF THE UNITED STATES.

NICHOLAS J. CURTIS,
Petitioner

vs.

UTAH FUEL COMPANY, et als.,
Respondents.

SS. NOTICE.

TO THE ABOVE NAMED RESPONDENTS AND THEIR ATTORNEYS OF RECORD:

Please take notice that a petition for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is this day sent up to the Clerk of the United States Supreme Court, Washington, D. C. to be submitted to him to be filed on the ..... or as soon thereafter as counsel can be heard.

Dated at the city of Trenton, Mercer County, State of New Jersey this 4th day of January, A. D., 1933.

A printed copy of the Petition, Exhibits attached thereto and made parts thereof, Supplemental Brief, and the Original Brief as filed with the Circuit Court of Appeals is served upon you herewith.

Nicholas J. Curtis,
Petitioner.

United States v. Thompson, 251 U. S. 407. (28 U. S. C. A. 729)

Mr. Chief Justice White delivered the Opinion of the Court.

(4) It remains only to consider the contention that, irrespective of the want of persuasive power of the Pennsylvania cases, as the case in hand concerns the prosecution for a crime committed in Pennsylvania, even though it be a crime against the United States, the state rule, in virtue of the provisions of section 722 of the R. S. of the United States (Comp. St. Sec. 1542), was authoritatively controlling on the court below and is so controlling here. (R. S. 722.)

Ex Parte United States, 101 F. 2d 870.

(13) Varying conditions in the new world soon justified changes in the common law as known during the time of Lord Coke. Criminal practice and procedure did not remain static. . . . The situation did not prevent the federal trial courts from adopting the same procedure for use in criminal cases. United States vs. Plumer, 27 Fed. Cas.

551, 572, No. 16, 055; United States v. Harding, 26 Fed. Cas. 131, 136, 137, No. 15, 301. Courts look to the spirit of modern legislation, and to the trend of decisions, both federal and state, to determine what is the true and enlightened rule. Funk v. United States, 290 U. S. 371, 54 S. C. 212, 78 L. Ed. 369, 93 A. L. R. 1136; United States v. Wood, 299 U. S. 123, 57 S. Ct. 177, 81 L. Ed. 78; Patton v. United States, 281 U. S. 276, 50 S. Ct. 253, 47 L. Ed. 845, 7 A. L. R. 263.

(14-15) Although it is our belief that the mere fact that the procedure here in question was known and exercisable by trial courts at common law prior to the American Revolution (although used only in civil cases) sanctions exercise by the respondent if the Constitutional guaranty is not offended thereby it is not necessary to rest our conclusion thereon. Respondent was authorized to observe the common law procedure in criminal cases, as modified by the state practice as of the date that the state was admitted into the Union (Holmes v. U. S., 5 cr., 269 Fed. 96; Logan v. U. S., 144 U. S. 263, 12 S. Ct. 617, 36 L. Ed. 492. Hughes Federal Practice (1931), Sec. 3730.) . . .

Sec. 722, of the Revised Statutes of the United States, which today primarily governs the criminal procedure of federal trial courts provide that the trial courts can follow the Wisconsin State Practice, so long as that practice is not offensive to the constitutional guaranty of trial by jury. Title 28, Sec. 729, U. S. C. A. 28 U. S. C. A. Sec. 729. . . . That the procedure in question does not violate the Sixth Amendment to the Constitution already has been shown.

(19-20) . . . . In the absence of prohibitive legislation courts have inherent power to provide themselves with appropriate procedures required for the performance of their task. Ex Parte Peterson, 253 U. S. 300, 312, 40 S.

Ct. 543, 64 L. Ed. 919; Funk v. U. S., 290 U. S. 371, 381, 384; 54 S. Ct. 212, 78 L. Ed. 369; 93 A. L. R. 1136.

FORTY-NINTH CONGRESS. SESS. II, Chap. 137, March 3, 1887. Sec. 1 . . .; and no civil suit shall be brought before either of said courts (Circuit and district) against any person by any original process of proceeding in any other district than that whereof he is an inhabitant; . . .

Sec. 5. That nothing in this Act shall be held, deemed, or construed to repeal or affect any jurisdiction or right mentioned either in Sections six hundred and forty-one, or six hundred and forty-two, or in six hundred and forty-three, or in seven hundred and twenty-two, or in title Twenty-four of the Revised Statutes of the United States, or mentioned in section eight of the Act of Congress of which this Act is an amendment, or in the Act of Congress approved March first, eighteen hundred and seventy-five, entitled "An Act to protect all citizens in their civil or legal rights."

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 8027. October Term, 1942.

NICHOLAS J. CURTIS,
Plaintiff-Appellant,
v.
UTAH FUEL COMPANY, et al.,

Before MARIS, JONES and GOODRICH, Circuit Judges.

ORDER.

AND NOW, October 22, 1942, after argument and full consideration the motions of the appellant to strike the memoranda filed by certain of the appellees herein be and the same hereby are denied.

BY THE COURT:

Maris,

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 8027. October Term, 1942

NICHOLAS J. CURTIS,
Plaintiff-Appellant,
v.
UTAH FUEL COMPANY, et al.,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW JERSEY.

OPINION.

(Filed December 7, 1942.)

Before MARIS, JONES and GOODRICH, Circuit Judges.

PER CURIAM:

For the reasons sufficiently set forth in the memorandum opinion of Judge Walker filed November 19, 1941, the orders of the district court from which the plaintiff has appealed are affirmed.

A true Copy:

Teste:

Clerk of the United States Circuit Court of Appeals for the Third Circuit.

DOCUMENT INDEX OF THE PHOTOSTATED EXHIBITS AND TWO MOTIONS, AND OF THE TYPED EXHIBITS EMBODIED THEREIN.

UNITED STATES CIRCUIT COURT OF APPEALS

THIRD CIRCUIT.

CASE No. 8027.

NICHOLAS J. CURTIS,
Plaintiff-Appellant,

vs.

UTAH FUEL COMPANY, et als.,
Defendant-Appellees.

Nicholas J. Curtis, LL. B.,
Plaintiff-Appellant Appearing in Person, Post Office Box 972, Room at No. 7 N. Stockton Street, Trenton, New

Document Index of Photostated Parts of Record and Exhibits Attached Thereto

1st. Docket Entries. 3 no. pages.

2nd. Notice of Appeal to Circuit Court of Appeals. 1 page.

3rd. Plaintiff's Memorandum relative to the matter of Curtis vs. Peraino. 1 page.

4th. List of Documents in the case of Curtis v. Peraino. 1 page.

5th. The Record (typewritten) of the case of Curtis v. Peraino. 30 pages.

6th. The Photostated receipts from the U. S. Post Office showing service of Notice of Motion to Submit. 1 page.

7th. Photostated back page of the receipts showing to whom the registered mail was sent. 1 page.

8th. Notice of Motion to Submit the Exhibits and Memorandum thereto. 4 pages.

9th. Additional Affidavit of the plaintiff introducing in evidence copies of cases pleaded in the Complaint. 18 pages.

10th. Receipt of Registered mail and its back two pages.

11th. Second Supplemental Bill of Complaint. 8 pages.

12th. List of Exhibit A of June, 1941. 2 pages.

13th. Application to Receive Nicholas J. Curtis. Dan Curtis and Christ Zavis, Applicants. 2 pages.

14th. Plaintiff's Affidavit for Leave to Take Papers. 1 page.

15th. State of Utah v. Nicholas J. Curtis. Affidavit Challenging the Judges of the Third Judicial District Court within and for Salt Lake County, Utah, for bias etc. 4 pages.

16th. Part of the Record of the case of Curtis vs. Utah Fuel Company, et als. No. 5547, U. S. Dist. Ct. Dist. of Ut. 5 pages.

17th. Plaintiff's Petition to the President of the United

States as it was taken from him or out of his pocket by the Police when he was turned over to them. 12 pages.

18th. United States District Court for the District of Columbia. Petition for Writ De Lunatico Inquirenio. Defendants, Louis Brownlow and Chas. W. Kutz, Petitioners. In Equity No. 8161. 2 pages.

19th. Order to Show Cause. 1 page.

20th. Summons to Plaintiff.

21st. Letter from the defendant, Dr. Frederick Dunn, to Judge G. A. Iverson. Dear Judge. Letter written at Provo, Utah, and mailed to said Judge through the mails at City and County Bldg., Salt Lake City, Utah . . . I feel that it would be all right to discharge the above named man in care of his brother, who seems anxious to look after him. . . . I believe that to give the man a fair trial outside would be proper. He seems to be quiet and in as nearly normal shape as he will ever be . . . Of course, he may have to be returned here later . . . one page.

22nd. State of Utah vs. Nicholas J. Curtis. Motion to quash, etc. 5 pages.

23rd. Curtis letter to Herman Harms. 2 pages.

24th. State of Utah v. Curtis. Curtis' Affidavit as to the perjury of the defendant William H. Folland who is in default.

25th. State of Utah vs. Curtis. Subpoena. "The State of Utah Sends Greetings to: William J. Fay, Melvin Hazen, W. H. Folland, Judge Fredrickson of Utah Fuel Company.

26th. Certificate of Service of Subpoena. 1 page.

27th. Curtis vs. Utah Fuel Co. et als. No. 5547. Summons. 2 pages.

28th. Warrant of Arrest Nicholas J. Curtis. W. H. Bramel, Judge. June 22, 1920. Judge Bramel had the civil

suit against the Utah Fuel Company under his control when he issued said Warrant.

29th. Warrant of Arrest Nicholas J. Curtis. December 12, 1923. Wm. M. McCrea, Judge. 1 page.

30th. Sheriff's Certificate. 1 page.

31st. Affidavit of the defendant William H. Folland against Nicholas J. Curtis.

> W. H. Folland, being duly sworn upon his oath says: I am acquainted with the condition of Nicholas J. Curtis; I verily believe him to be insane and a fit subject for care and treatment in the State Hospital; . . . See the Affidavit. A lawyer and in default.

32nd. Defendants' Dr. A. C. Callister and D. E. Smith Certificate and Wm. M. McCrea, Judge. 4 pages.

33rd. Sheriff's Certificate of Commitment. 1 page.

34th. Affidavit of the defendant William J. Fay at Salt Lake City, Utah.

35th. The defendants' Doctors Certificate. 4 pages.

36th. Sheriff's Certificate of Commitment. 1 page.

37th. Curtis' Memorandum offering in evidence the Affidavit of Dan Curtis. 1 page.

38th. Clerk's Certificate as to the Record of the Case in the District Court of Salt Lake County, Utah.

39th. UNITED STATES DISTRICT COURT WITHIN AND FOR THE DISTRICT OF UTAH. In Re: Nicholas J. Curtis. Application for Writ of Habeas Corpus. No. 6548, Law; No. 6075, Law. Dan Curtis' Application, Affidavit, in Support of the Application. 6 pages.

40th. Christ Zavis' Affidavit in Support of the Application. No. 6548 Law. 3 pages.

41st. Dan Curtis' Complaint in the District Court of Salt Lake County, Utah. 3 pages. This is the Complaint which Judge Bramel had under his control when he issued the

Warrant of Arrest against the plaintiff above named. See par. 28th above.

42nd. Summons against the Utah Fuel Company.

43rd. Sheriff's Return of Service of Summons upon the Utah Fuel Company. 1 page.

44th. Demurrer to Complaint. Ferdiand Erickson who staged the first mob at Salt Lake City, Utah, Chief Counsel, Dickson, Ellis, and Lucas Attorneys for Utah Fuel Company. 1 page.

45th. Notice of Dismissal filed by Dan Curtis because of the complaint being false.

46th. Mark's and Jensensons' Claim of lien against the claim in the suit. 1 page.

47th. Praecipe for Dismissal filed by Willey & Willey attorneys for plaintiff. 1 page.

48th. Clerk's Certificate Dist. Ct. of Salt Lake County, Utah. 1 page.

49th. Curtis' Memorandum re. Curtis vs. Minas Candaras—Minerva Restaurant. Abraham L. Rosenberg, Lawyer. District Court of Bergen County, Hackensack, N. J.

50th. Letter from Abraham L. Rosenberg to Nicholas J. Curtis. 1 page.

51st. Another letter from Abraham L. Rosenberg.

52nd. Curtis vs. Minerva Restaurant—Minas Candaras, (Mr. Miners) before Hon. Jerome J. Dunn, Supreme Court Commissioner, at Ridgewood, New Jersey. 3 pages.

53rd. Curtis vs. Minerva Restaurant. Dist. Ct. of Bergen County, Hackensack, N. J. 2½ pages and the Order of Judge White. 3 pages.

54th. Memorandum of Nicholas J. Curtis re Curtis vs. Zervos. Poughkeepsie Police Court, Poughkeepsie, New York. 3 pages.

55th. Curtis' Complaint for wages against Mathew Zervos. 3 pages; and Curtis' Request to Find. 1 page.

56th. Index of the case heard in the Police Court at Poughkeepsie, New York. 1 page.

57th. Direct Examination by the Court. 12 pages.

58th. Bus Receipt. The hold up by the Bus Driver.

59th. Curtis' Application to the Labor Department. 1 page.

60th. Letter from the Department of Labor. 1 page.

61st. Another letter from the Department of Labor and followed by 3rd letter from the same woman.

62nd. Curtis' Memorandum offering in evidence certified copies of Motions verified by the defendant William H. Folland, part of a page.

63rd. United States District Court District of Utah. Curtis vs. Utah Fuel Company, et als. No. 6076, Equity.

64th. Motion to Strike the Amended Complaint herein and to quash service of Subpoena. Motion signed by William H. Folland, one of the defendants in the present suit, and Shirely P. Jones, Attorneys and Solicitors. 2 pages.

65th. Motion to Quash the Service of Subpoena in Equity. Filed by William H. Folland. Motion signed by Horace H. Smith, attorney for William H. Folland, and Certificate of Counsel. 2 pages.

66th. The James Damis Case. Parts of. In Chancery of New Jersey. Curtis Memorandum. 1 page. Petition is signed by Thomas S. Doughty, Solicitor of Petitioner.

67th. Affidavit of James Damis. 3 pages, and Order thereon 2 pp. E. R. Walker, C. 2 pages. Clerk's Certificate. 1 page.

68th. Evidence given by James Damis. 6 pages.

69th. Letter from Holy Cross Hospital, Salt Lake City, Utah.

70th. Weber's Order to remove Curtis from his room. 1 page.

71st. Order to show cause why not be removed. 1 page.

72nd. The Paterson Savings Institute against Marcus et als.

73rd. Subpoena to Marcus.

74th. Parts of the case of Curtis vs. the Owl Restaurant. 13 pages.

75th. Clerk's Certificate, U. S. Dist. Ct. Dist. of N. J.

76th. Photostated Copy of the Certificate of the defendant Dr. Frederick Taylor. See page 29th of the Complaint. Dr. Taylor was forced to issue this certificate by C. W. Simons, United States Railroad Administrator at Salt Lake City, Utah. He typed on the typewriter of Mr. Simons and signed the name of the defendant Dr. Frederick Dunn. Dr. Taylor is in default. This Exhibit was left out. Plaintiff applied to the Clerk and had it photostated the same is to be filed here in this Court Oct. 19, 1942. The Photostat is from the Original which was given to the plaintiff by the defendant Dr. Frederick Taylor.

.....

Plaintiff.

UNITED STATES DISTRICT COURT.
DISTRICT OF NEW JERSEY.

NICHOLAS J. CURTIS,
Plaintiff,
vs.
UTAH FUEL COMPANY, a corporation, et als.,
Defendants.

Document Index of Photostated Parts of Record and Exhibits Attached Thereto

CIVIL 728

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA } SS:
DISTRICT OF NEW JERSEY }

I, Benjamin F. Havens, Clerk of the United States District Court, District of New Jersey, do hereby certify that the following are true copies of exhibits and papers in the above stated cause:

1. Curtis v. Utah Fuel Company, et als. N. 676-Equity U. S. D. Ct. Dist. of Utah, Plaintiff's Affidavit filing the Depositions of Arthur Capener and Mrs. Paul F. Barton, 1 page.
2. The Deposition of Arthur R. Capener, Mayor of the City of Garland Box, Elder County, Utah, 3 pages.
3. The Deposition of Mrs. Paul F. Barton, 4 pages.
4. Clerk's Certificate, W. B. Wilson, Clerk, U. S. Dist. Ct. Dist. of Ut. 1 page and cover page thereto.
5. Memorandum of the Plaintiff, 1 page.
6. Curtis v. Utah Fuel Co. et als. U. S. D. Ct. Dist. of Utah, No. 6076 Equity Motion to strike the Amended Complaint, etc. signed by W. H. Folland and Shirley P. Jones, 2 pages; and Motion to quash the service of Summons in Equity No. 6076, 2 pages; Clerk's certificate, 1 page and cover page.
7. Exhibit E, Affidavit of Utah Thompson, 1 page.
8. Sheriff's Office Receipts, 1 page.

9. Letter of those Greeks who were charged with murder with Gust Zambelis, 1 page.

10. Notice of sale of the plaintiff's automobile at Auction by Fay B. Syphus, 1 page. B. W.

11. B. W. Dalton's Demurrer and Affidavit thereto, 1 page.

12. The Summons to Fay B. Syphus, 1 page.

13. Sheriff's return, A. E. Gibson, Chief Clerk of Utah Fuel Co.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said court, at Trenton, in said District, this 20th day of October, Nineteen hundred and forty-two.

Benjamin F. Havens,
Clerk, District Court U. S.
Kathryn M. Flynn,
Deputy Clerk.

EXCEPTION TO RULING ON MOTION NO. 1 AS SET FORTH IN PAR. 6.

The ruling is repugnant to and violates the provisions of Section 1980 of the U. S. R. S., Section 47, (1), (2), (3) of Tit. 8, U. S. C. A.; Section 711; Act of Mar. 3, 1911, c. 231, Section 256, 36 Stat. 1160; Oct. 6, 1917, c. 97, Section 2, 40 Stat. 395; June 10, 1922, c. 216, Section 2, 42 Stat. 635; Section 371, Tit. 28, U. S. C. A. (Judicial Code, section 256, amended) Exclusive Jurisdiction of United States Courts; (First);

The last clause of said par. is repugnant to and violates the provisions of Section 550, (Criminal Code, Section 332.)

of Tit. 18; Sections 5323, 5427 of the U. S. R. S.; Act of Mar. 4, 1909, c. 321, Section 332, 35 Stat. 1152. It also violates the following rule, to-wit:

One who learns of a conspiracy after it is formed, and then joins it, or knowingly, aids in the execution of its scheme and shares in its profits, becomes from that time as much a co-conspirator as if he were one of those who originally designed it and put it in operation. Sanborn, Van Devanter, Hook, and Adams, 4 Judges Circuit Court Re: United States v. Standard Oil Co., 152 Fed. Rep. 290. Citing: Lincoln v. Claffin, 7 Wall. 132, 138, 19 L. Ed. 106; United States v. Babcock, Fed. Cas. No. 14,487; United States v. Cassidy (D. C.) 67 Fed. 698, 702; The Anarchists' case, 13 N. E. 865, 976, 17 N. E. 898, 122 Ill. 1, 3 Am. St. Rep. 320; United States v. Johnson (C. C.) 26 Fed. 682, 684; Malpractice. (38 C. J.) p. 520 . . . In Re Rosenkrans, 84 N. J. Eq. 232, 241, 94 A. 42, No. 39, 653. Court of Chancery of New Jersey. April 30, 1915. In the matter of Addison P. Rosenkrans, a solicitor of the court of chancery of New Jersey. On order to show cause why respondent should not be disbarred or otherwise disciplined and punished, Respondent suspended. Walker, Ch. Such are their practices in the cases against this plaintiff, and more so in the suit now pending to which the exceptions are filed.

The ruling as set forth in par. 5 thereof is repugnant to and violates the provisions of section 47, of Tit. 8, supra; the provisions of Section 88 of Title 18, U. S. C. A. See Notes and citations thereunder; Laws of New Jersey 1709-1881, 1755-1868. Sec. 307, p. 327. "Any judgment devised and contrived of malice, fraud, covin, confusion or guile is clearly and utterly void."

EXCEPTION TO RULING ON MOTION NO. 2.

The inhibition of section 1 of the judiciary acts of March 3, 1887, c. 373, 24 Stat. 552, and Aug. 13, 1888, c. 866, Sec. 1, 25 Stat. 433 (U. S. Comp. St. 1901, p. 508), that "no civil suit shall be brought before either of said courts (the Circuit Court and District Court) against any person by any original process or proceeding in any other district than that whereof he is an inhabitant" does not restrict the jurisdiction of the Court, nor its power to bring in parties without its district, in the case under consideration, because that provision is inapplicable to instances in which exclusive jurisdiction over particular cases, or classes of cases, is created and conferred upon the courts of the United States by special acts of Congress. Sanborn, Van Devanter, Hook and Adams, Circuit Court Judges in re United States v. Standard Oil Company, supra. Citing: U. S. v. Mooney, 116 U. S. 106, 6 Sup. Ct. 304, 29 L. Ed. 550; several other cases. See the Decision in the Reports. See the Several Acts of Congress cited on page 3 of the Complaint.

EXCEPTION TO RULING ON THE SECOND COUNT. See reasons and laws and citation given on the Ruling on Motion No. 1.

Exception to Rulings on Counts 21 and 22. See reasons, laws and citation set forth in the exception to motion No. 1.

EXCEPTION TO THE RULINGS ON MOTION NO. 5.

This said ruling is repugnant to and violates the true facts of the record and tends to change or alter; and does change

and alter the nature of the suit. Due and legal notice were given and served by Registered Mail the Receipts of which are fastened to the Original on file in this Court. The Postmaster who received them was asked by this plaintiff to write the name of each attorney to whom the letter was addressed and he was directed by the Senior at Desk to "help the old man" . . . Due and timely appearance entered by H. Collin Minton, Jr., and the call of the motion was answered by him theretofore. The plaintiff moved thus: I submit the Motion and move to submit the Exhibits. The Court. What? The Plaintiff: I submit the Motion and move to submit the Exhibits. The Court: Any opposition? H. Collin Minton, Jr. Yes, according to his Memorandum the Exhibits have nothing to do with Utah Fuel Company. The Court. All right, I will see if they have or have not.

The Court. Mr. Curtis, will you wait a few minutes to take care of these other matters and then I will receive your Exhibits. Mr. Curtis. Certainly. The Court. Certainly I will. Theretofore the plaintiff waited until 2 o'clock P. M. when his honor returned and received the Exhibits regularly without any opposition or appearance on the other sides.

Federal Rule 5 (b). Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney. . . .

Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address . . . Service by mail is complete upon mailing. Sec. 5.05. Service must be made upon attorney. M. Fed. Pr. p. 388.

Sec. 6.01 (Fed. Rule 6) Schedule of Time. On p. 390.

(4). Time for Noticing Written Motions Other Than Those Which may be Heard Ex Parte.

In all cases unless a different period is fixed by the rules or by order of the court . . . Not later than 5 days before the time specified for hearing. Rule 6 (a). Additional Time after service by mail . . . 3 days shall be added to prescribed period. Rule 6 (e). M. Fed. Pr., p. 386.

Nicholas J. Curtis, LL. B.,
Plaintiff, No. 106 Mansion Street,
Poughkeepsie, N. Y.

UNITED STATES SUPREME COURT,
WASHINGTON, D. C.

October Term 1943.

NICHOLAS J. CURTIS,
Petitioner,

vs.

UTAH FUEL COMPANY, et als.,
Respondents.

BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

THE BRIEF TO THE C. C. A. 3RD D. C. IS MADE A PART HEREOF BY REFERENCE. THE REASONS ARE THE FINANCIAL ABILITY OF THE PETITIONER TO MEET AND COPE WITH THE ELEMENTS OF THE CRIMINAL CONSPIRACY ALLEGED IN THE COMPLAINT AND EXHIBITS.

"PETITIONER'S BRIEF".

MAY IT PLEASE THE HONORABLE COURT:

POINTS TO THE QUESTIONS INVOLVED.

Point 1 to Q. 1st. The requirements of the provisions of Fed. Rule 84, form No. 2 of the Federal Rules of Civil Procedure have been strictly complied with. The best argument is to be found on page 3, paragraphs a. and b. of the Complaint. Paragraph a. alleges diversity of citizenship; and paragraph b. alleges that the suit arises under the Articles of the United States Constitution and the several Acts of Congress cited therein. Utility Manufacturing Co. vs. Elgin Laboratories, (S. D. N. Y. 1939) 22 D. J. Cull. 1, 1 Fed. Rules Serv. p. 30. The purpose of the New Rules of Civil Procedure is to avoid technicalities. R. 4 (d) (6) following section 723c of Tit. 28 U. S. C. A. Moore vs. City of Lehigh, 26 F. Supp. 39. See also Point (e) on page 13 of the printed parts of the Record of pleadings in the District Court.

The suit is of a civil nature or character and arises under the Articles of the Constitution and Laws of the United States which are cited in pars. a. and b. on page 3 of the complaint. State of Tennessee vs. Union and Planters Bank, supra in the Petition page ..... and cases in point.

Point two to Q. 2d. The application for the issuance and services of summons which is set out on pp. 1-2 of the complaint is based upon the principles established by the courts ever since they were established. See Lovelands Federal Forms; Fosters Federal Practice; Hughes Federal Practice; and Bishop's Forms. See also Bender's Forms Practice in the Federal Courts.

Point three to Q. 3rd. The best argument on this question is to be found in the exhibits submitted to the District Court some of which are made parts of the present Petition and Briefs and submitted herewith.

Point fourth to Q. 4th: The best argument in support of an affirmative opinion is to be found in the Records of the Twelve (12) cases cited on pages 3-4, and again on page 65 of the Brief to C. C. A. 3rd C. which is made part of this brief; and the five (5) cases Numbered 4193, 4194, 6468, 7525, 8027 Circuit Court of Appeals Third Circuit; and in the certified exhibits submitted according to law. (Judicial Code, Judicial Notice. 28 U. S. C. A. sections 687, 688, 695, pp. 54-55 of brief to C. C. A. 3rd C.

The respondent Utah Fuel Company, during the years 1907 to 1918, was the owner and operator of the village, yards, and mines Nos. 1 and 2 Clear Creek, Utah, as well as several other villages and coal mines in Carbon County, Utah. In the year 1909, or thereabout, it had labor trouble and summoned this petitioner to assist its officers to ascertain the cause. Having received a clear service in the inquiry conducted from room to room in the mines its General and resident Superintendent appointed or drafted, the respondent its interpreter. For the sum of 50 cents a day it required to him to attend the hirings of all Greek miners; the making out of their questionnaires; to attend the resident doctor at the respondent's local hospital in all sickness and injuries of its said employees; and settle every claim against it arising in the course of employment, and to do so in its favor regardless of the merits of the injury or sickness, and injuries and death or deaths; to attend and assist two (2) accident insurance companies in the issuance of policies to the miners; to attend and assist the company doctor in making out the insurance claims of the miners and see to it that all such claims were made good. In the light of the compensation of 50 cents a day the respondent company and its officials were utterly out of reason. Petitioner gave Notice to the officials of the respondent company to the effect that he no longer wished

to serve them as their interpreter but that he will continue his employment as miner. On this the petitioner insisted.

The defendant company and its officials maintained a "blacklist" of every objectionable employee and had it posted in its main office just inside and above the window where all inquiries regarding employees and employment were conducted. A systematic boycott was strictly enforced against all complainants. The same misfortune was put in force and operation against this petitioner and it is carried on to the point where this honorable court receives it. See the certified Exhibits and its pleadings as filed in the District Court and in the C. C. A. 3rd C.

Point 5 to Q. 5th: The best argument on this question is to be found in the provisions of Fed. Rule 20 (a). See par. 16, p. 12; par. 17, pp. 12-13-14, points (a) to (f) of the printed parts of the Record of Pleadings filed in the district court; II. Joinder of Parties Defendants. F. R. C. Proc., R. 20, pp. 1-to-21 of brief to C. C. A. 3rd C.

Point 6 to Q. 6th: The best argument the petitioner is able to give is to be found in section 729 U. S. C. A., Tit. 28 (R. S. Sec. 722) and the authority of the cases of Tennessee v. Union and Planters Bank, material parts of which are set out in the Petition supra, pp. 29-30-31; United States vs. Thompson Ex Parte United States, set out on the appendix of the Petition, and cases in point.

Point 7 to Q. 7th: In the prosecution of the conspiracy set forth in the complaint and the exhibits submitted, the respondents violated the following Articles of the United States Constitution: Articles IV, V, VIII, and XIV. See material parts of which is quoted on page 2a, Section 41 of Tit. 8 U. S. C. A. quoted on page 3a; Section 47 of Tit. 8. See it on pages 104-105 of the printed parts of the Record; Sections 1, 2 and 3 of Tit. 15, U. S. C. A. See sections 1, 2

and 3 on page 4a of Brief to C. C. A. 3rd C.; The respondents also violated sections 52, 54, 88, 231, 550, and 408. See the said sections quoted on pages 6a et seq.

As to the influence of the respondent Utah Fuel Company, controlled and controlling and associated corporations see its Articles of Incorporation parts of which are quoted and set out on pages 7, 8, 9, 11 of the brief. During those years set forth above, the respondent company have had and enjoined a complete monopoly of the coal mined in the State of Utah. Their strangulation of things in the State of Utah was complete. See the certified exhibits.

Point 8 to Q. 8th: The exhibits submitted present the best argument to question 8th. (Sections 687, 688, 695 of Title 28 U. S. C. A.) If this suit is a case at all it is one in conspiracy. The conspiracy and boycott begun in Carbon County, in the State of Utah and was carried on in said state for years thereby drove this petitioner and his brother out of said state. The records show that in the year 1919, the respondent Utah Fuel Company was well represented in the District of Columbia. United States Senator Reed Smoot (See the certified Annual Report in the Record) became its director and Vice-President and must be presumed that he was the best man of the respondent company taking care of things natural in Washington, D. C. He posed to have more influence in the United States Government than any other senator. He and his friends made the best start there.

(See the beginning of the criminal prosecutions). Your petitioner is far from being of the class of persons without a sin, but he has a clean and noble character record.

Point 9 to Q. 9th: The construction and application of section 103 of Tit. 28 U. S. C. A. is already before this court and before all the other courts of the United States. See citations on pages 24-25 of the Petition supra; and

pages 28, 29, 30, 31, 32, 33, and 34 of the brief to C. C. A. 3rd C.

Point 10 to Q. 10th: Where the crime shall have been committed. The 6th Article of the United States Constitution. See the argument in the Petition supra, p. 6; And when any offense against the laws of the United States shall be begun in one judicial district of the United States and completed in another, every such offense shall be deemed to have been committed in either of said districts, and may be dealt with, inquired of, tried, determined and punished in either of said districts. 28 U. S. C. A., Sec. 103. See par. b on page 56, paragraphs 1 to 28 of XVI on pages 55 to 65 of brief to C. C. A. 3rd C., par. 17 on p. 28 of brief and cases cited therein.

Point 11 to Q. 11th: The boycotting, persecutions and prosecutions consumed the petitioner's earning for a period of at least 25 years, and to require him to chase backwards his wrongdoers from state to state while the principal defendant, their procuror, would be here in New Jersey would be vain procedure. The law should and ought to be enforced as against all. Snydam v. Broadnax, 14 Peters 67; Union Bank vs. Jolly's Administrators, 18 How. 503. The conspiracy set forth in the complaint is defined by Chap. 119. Conspiracy. 2:119—Revised Statutes of New Jersey and Revised Statutes of Utah, Chap. 11. Criminal Conspiracy defined. See pages 92-93 (Sections 725 and 729, Title 28, U. S. C. A.).

Point 12 to Q. 12th: The conspiracy will be operated in the court rooms of the federal court for the district of New Jersey to the same effect and for the same purposes for which it was openly operated by William V. Rosenkrans and Ex-Judge Thomas Glynn Walker (see the Record). There is already a failure of justice, for the reasons that those of the respondents who personally and actually con-

ducted and operated the leading parts of the conspiracy, committed the perjuries, issued the perjured certificates and conducted mob trials on the grounds and for the reasons that your petitioner sued the respondent Utah Fuel Company, are no longer before the court having been discharged by the said ex-district judge.

Point 13 to Q. 13th: The district court of the United States for the district of New Jersey, has wrongfully and unlawfully and in violation of the provisions of the Articles of the U. S. Constitution cited in point 7, supra; Subdivisions (1), (see par. 8 on p. 23 of former brief); (2) (see par. 8, on pp. 23-24 of former brief); (12) (see par. 10 on p. 24 of former brief); (14) (see it on p. 24 of former brief); (17) (see it on p. 24 of brief); and (23) (see it on p. 26 of former brief), of Section 41 of Title 28, U. S. C. A.; Sections 43 and 47 of Tit. 8, U. S. C. A.; the Sections of title 18 which are cited in point 7 supra and quoted in the Appendix of the former brief to C. C. A. 3rd C.; Sections 103, 371 (see it on pages 15a-16a); 377 (see it on p. 45 of former brief); 504 (see it on p. 72 of former brief); 725 (see it on p. 6a. of former brief); 687, 688, 695 (see them on pp. 54-55); and 729 (see it in the Petition on p. 27; and on pp. 8-9 of the printed parts of the Record); Argument: VIII, b. on pp. 45-46; Opinion of the Court below is set out on pages 17-22; Opinion of this Court in re Hague vs. Committee of Ind. Organization, (see pp. 37 to 45); XVIII, page 75 of brief and cases cited therein; XXII, page 83 and cases cited therein.

Point 14 to Q. 14th. The best argument on the question is the Opinion of this Court in Mayo v. Lakeland Highlands Canning Co., 309 U. S. 521, 60 S. Ct. 521, (3) See pp. of the Petition and cases cited thereunder to page 11.

Point 15 to Q. 15th: The suit is one within the exceptions mentioned in section 5 of the Act of March 3, 1875,

as amended by the Acts of 1887-1888. See page 1 et seq. of the petitioner's Memorandum as filed in the C. C. A.; Title 24 of the Revised Statutes of the U. S.; the exceptions mentioned in said paragraph 5 have been brought forward by the Act of March 3, 1911 and embodied in the subdivisions of section 41 of Tit. 28 U. S. C. A. which clauses are cited in POINT 13 supra. The said section 1 of the said Judiciary Acts applies to and governs the suit in so far as the diversity of citizenship is concerned (par. a. on p. three (3) of the Complaint). The exceptions mentioned in said section 5 of the said Judiciary Acts apply to and govern the suit on the grounds cited and mentioned in par. b. on page three (3) of the Complaint. Hague vs. Committee of Ind. Organizations and cases in point. See also the said subdivisions of the said section 41 of 28 U. S. C. A., pp. 37-41 of former Brief; State of Tennessee vs. Union and Planters Bank, supra. United States vs. Thompson, supra; Ex Parte United States, supra, and cases in point.

Point 16 to Q. 16th: The instant suit in its conspiracy character is governed by the provisions of the above mentioned clauses of the above mentioned section 41 of Tit. 28 U. S. C. A.

Point 17 to Q. 17th: The best argument is to be drawn from the Judicial Notice of the Records of the cases cited on pp. 34 and again 64 of the brief to the C. C. A.; and in the Exhibits submitted, as to the district court and the Records of the cases in the C. C. A. 3rd C. cited above on page 6; Argument: XI, on p. 48 and cases cited; XVIII, and cases cited therein.

Point 18 to Q. 18th: The records and decisions of the C. C. A. 3rd Circuit in the cases in which this petitioner was a petitioner or appellant before said court and the argument cited in Q. 17th, supra, is the best proof to the effect that the said C. C. A. 3rd C. has repeatedly refused

to grant to this petitioner the equal benefits of the laws governing the proceedings before it, in violation of and in conflict of all its own decisions and the decisions of all the other U. S. Circuit Courts of Appeal, and of this Court. It is the duty of the said Circuit Court to command the district court to assume jurisdiction of the conspiracy complained of and do make due inquiry of the facts and merits of the plaintiff's pleadings by examining his witnesses. This is an imperative duty, which may not be renounced, and whose discharge may not be evaded by the said C. C. A. 3rd C. (XVIII, on p. 75 and cases cited therein).

Point 19 to Q. 19th: The reasons given by the district court in its Findings of Fact and Conclusions of Law are in conflict with the provisions of the subdivisions of section 41 of Tit. 28 which are cited in point 7, supra.

The said Order is in conflict with the decisions of this Court: Hague vs. the Committee of Industrial Organization, supra, and cases in point; State of Tennessee vs. Union and Planters Bank, supra, and cases cited and cases in point; United States vs. Thompson, supra and cases in point; Ex Parte United States, supra, and cases in point; United States vs. Wood, supra and cases cited and cases in point. In violation of the said laws of the United States, the district court discharged the conspirators and forcibly suppressed the conspiracy.

Point 20 to Q. 20th: Argument, Statutes, authorities and citations in XXI, on pp. 80-81-82 of the former brief apply to and control this question.

Point 21 to Q. 21st: APPEARANCE FOR PURPOSE OF MOTION. In re Marcus et al., 21 Fed. 2d. 483, (2).

Appearance and answer in rule to show cause (on Motion etc.) confers jurisdiction regardless of sufficiency of service. Ex Parte Craig. (C. C. A. 2d Circuit, 1922) 282 F. 138.

Defendant in error may not deny pendency of motion to strike where he appeared generally and participated in argument. Joshir vs. Snedec, 259 P. 41, 82 Colo. 245.

MOTIONS.

(42 C. J.) (Sec. 64) G. Waiver—1. It is competent for a party to waive want or irregularity of Notice of Motion. See also the cases cited thereunder in Note 31.

(42 C. J.) (Sec. 64) 2. By Appearance—An appearance and contest a motion without preliminary objection is a waiver of any irregularity or defect in the Notice and see cases cited thereunder in Note 39; or of the objection that the notice was too short. See cases cited under Note 40.

Evidence. Federal Rule 43. See also the Exception filed in the district court which is attached here to this brief.

The appearance of H. Collin Minton, Jr. and his participation in the argument of the Motion for Leave to submit the exhibits waived whatever, if any, objections to the notice of motion may have been present. See the Receipts of Registered mail as photostated and made a part of the photostated Record: the Notice of Motion, Motion and Affidavit thereto which are parts of the Photostated Record.

Point 22 to Q. 22d: The best argument in the affirmative is to be found in:

(a). The unnumbered page of the brief to C. C. A. 3rd C. Headnote to the Questions Involved,

(b). The first Motion filed by this petitioner in the said C. C. A. 3rd C. to strike the first Memorandum filed by the respondents. Motion dated Sept. 28, 1942.

(c). The Second Motion filed in the C. C. A. 3rd C. by the petitioner to strike the second Memorandum filed by the appellees and their attorneys. Motion dated Oct. 6, 1942. And:

(d). Appellant's Memorandum to said two motions.

Point 23 to Q. 23rd: The best argument is to be found in the docket entries as certified by the Clerk of the C. C. A. 3rd C. The said certificate is attached to this Brief and made parts hereof. See pp. 311-313.

Point 24 to Q. 24th: The best argument in the affirmative is to be found in paragraphs 7, 8, 9, 10 of petitioner's Memorandum to the said motions to strike as filed in the C. C. A.

Point 25 to Q. 25th: The Memorandums filed in the C. C. A. 3rd C. by the respondents and their counsels are obscene and objectionable pleadings for the reasons more fully appear in their statement of the case as stated in the first and second memorandum. In their first Memorandum the respondents and their attorneys say: . . . Accordingly, . . . we wish hereby to adopt and to stand upon the said Memorandum of Appellees as previously prepared by Messrs. Minton and Campbell and filed with this Honorable Court.

On p. 3 of their Argument in the memorandum referred to above the respondents state: The basis of the motion to strike the complaint is due to the impossibility of framing an answer to the complaint by reason of its vague, indefinite, incoherent and unrelated allegations and scandalous nature. . . . In other words, on account of the factual basis for the motion made in the District Court, it would be impossible to prepare answers.

The said objections or pretences are presumed to have been dismissed by the District Court and in fact they are nothing more than scandalous charges. Again, refusing to proceed according to the Statutes and Rules of Practice and Procedure, they laid low and at the end of the time for the hearing of the appeal they filed their said Memorandums to dismiss the appeal.

Point 26 to Q. 26th: There should be a fair compliance with rule 52 (a) of the Federal Rules of Civil Procedure following section 723c of Tit. 28 U. S. C. A. Roberts, J. in Lakeland Highland Canning Company, 309 U. S. 521, 60 S. Ct. 52; See also Par. K. (4) of the Petition and cases cited thereunder.

In the instant suit the District Court gave no reason in its findings of fact and conclusions of law for granting the respondents', Utah Fuel Company's and H. Collin Minton, Jr., Motion to strike Counts 23rd and 24th. It further appears in the said findings that the District Court proceeded: MOTION NO. 4.

The Utah Fuel Company moves to strike the complaint on the grounds more particularly set forth in its notice of Motion.

Paragraph 8 of the said Notice of Motion set forth:

8. The twenty-third and twenty-fourth counts contain scandalous charges that the defendant company conspired with petitioner herein to maliciously renew and reopen the alleged persecution of the plaintiff—although it appears from the allegations of the plaintiff that petitioner herein appeared in behalf of defendant-company in answer to a complaint filed by said plaintiff against said company-defendant.

The Petitioner herein wishes to ask this Court if an appearance made in behalf of defendant-company in answer to a complaint filed by said plaintiff against said company-defendant, authorizes the Counsels or Attorneys of said defendant-company to go before the District Court and argue: . . . We have no defense to the suit. Dismiss his case and put him in. They do (give judicial promotions to those who assist the company-defendant) that; they do those things; and they do the same thing with you

(To Hon. Phillip Forman, D. J.). . . . See Count twenty-fourth on page 24th of the Complaint.

The Original Complaint alleges two (2) jurisdictional grounds: (1) Diversity of citizenship; and (2) Suit arises under the Articles of the United States Constitution and the Statutes of the United States cited in the Caption of the Petition and on page 3 of the Complaint. Utility Manufacturing Co. vs. Elgin Laboratory, supra.

The Complaint was printed in the form in which it is received by this Court, and the District Court refused to read, consider and give a fair construction and application of the provisions of federal rule 52 (a); and refused to decide all the Counts. The Counts in the Complaint present the Questions Involved, which questions determine the character of the suit. State of Tennessee vs. Union and Planters Bank, supra, citing Osborn vs. Bank of United States, supra. See also V on pages 42-43; b. of VII; and XVIII on p. 75 of former brief.

CONCLUSION.

Adoption by reference to the former brief filed in the C. C. A. 3rd C. See pages 95-97 inclusive.

1. The Original Complaint alleges two jurisdictional grounds; (1) Diversity of citizenship;

(2). Suit arises under the Articles of the Constitution and Laws of the United States and treaties made under their authority. See Point 7 to Q. 7, supra.

2. If this action is a suit arising under the Constitution and Laws of the United States, it arises under said Articles of the United States Constitution and the several Acts of

Congress which are cited in said sections of said Titles, supra.

3. The findings of fact and conclusions of law of the District Court are based solely on ground (1).

4. The provisions of said Articles of the United States Constitution and Acts of Congress cited in par. b. on page three (3) of the Complaint have been excluded from the reasons given by the District Court from its said Findings of Fact and Conclusions of Law. Fed. Rule 52 (a) Mayo vs. Lakeland Highlands Canning Co., supra, and cases cited thereunder. See p. 11 of the Petition here.

5. The respondents are represented by numerous and influential attorneys, including the Attorney General and Assistant Attorney General of the State of Utah. The respondents and their said attorneys have the true facts which are alleged in the complaint in their Official Records, as well as in the Records of the Courts and it must be presumed to have first hand knowledge of all the facts pleaded by the petitioner. In addition to these the Exhibits submitted. The respondents' very own acts have been certified by the proper authorities before whom they staged their mob tactics because this petitioner sued the defendant-company. And that is something. (Sections 687, 688, 695 of Tit. 28 U. S. C. A.)

The Findings of Fact and Conclusions of Law, if supported by any substantial competent evidence, are conclusive. Mayo vs. Lakeland Highlands Canning Company, and cases cited thereunder, supra, page 11 of Petition in par. K. See also those citations which are cited on page 57 of the printed Complaint.

6. The respondents and their attorneys, recognizing the facts to be that they have no legal defense to the facts alleged in the complaint; filed not any objection or exception to the Findings of Facts and Conclusions of Law of the District Court; and took no appeal therefrom (Statutes, Authorities and citations cited and set out on the unnumbered paragraph of the former brief. Headnote to Questions Involved, on page 1; Motions first and second and Memo. thereto filed by the respondent in the C. C. A. 3rd C.).

7. It must be presumed that it has been established that the jurisdiction of the District Court over the instant suit arises under the Constitution and Acts of Congress of the United States. All these contain ingredients of the original cause under the Industrial Act of the State of Utah, under the contract of insurance, and under the circumstances in which this petitioner was placed by the respondent Utah Fuel Company. This being the case, it is in the power of Congress to give the District Court jurisdiction of this cause. State of Tennessee vs. Union and Planters Bank, supra, and cases in point. (28 U. S. C. A., Sec. 729).

8. The Articles of the United States Constitution and the sections of the Several Acts of Congress under which jurisdiction of the suit arises are cited in the Caption of the Petition; point 7 to Q. presented 7 and quoted in the Appendix of the former brief to the C. C. A. 3rd C. The District and Circuit Courts must apply and construe said Articles of the United States Constitution and sections of the said Acts of Congress, and both of them have had repeatedly failed to do so leaving the defendant Utah Fuel Company and others to carry on the conspiracy set forth in the complaint. An examination of the Exhibits

submitted will show that the conspiracy is carried on against the safety of the public; against the public policy; and in violation of the United States Constitution and Statutes of the United States thereon. The facts that this petitioner sued the said defendant-company for a just and legal cause does not justify the defendant-company, nor any other individual, to carry on the conspiracy alleged in the Complaint. (The law should and ought to be enforced against all. See V. on page 42 of former brief and cases cited therein.)

9. The exercise of the powers conferred upon the said District and Circuit Courts by the Constitution and Acts of Congress, to acquire jurisdiction of controversies and parties by the issue and service of process, are not discretionary with said Courts. It is their duty to deal with the conspiracy properly presented to them (XI, page 48; XVIII, page 75; VIII, pages 45-47 of former brief to C. C. A. 3rd C.).

10. The said Federal Courts have power to command obedience to the Constitution and Acts of Congress of the United States and to keep the peace to the extent governed by the Constitution and Laws of the United States (In re Subolt, 100 U. S. 871 on p. 895 see parts of in VIII, b. on pp. 45-46 of former brief.).

11. It is an imperative duty of these said Courts to summon and hear, before decision, every necessary party in the suit and to consider the evidence against said parties in the exhibits submitted. These said Courts must execute the powers and functions conferred upon them by the said Articles of the U. S. Constitution and Acts of Congress as well in this case as in every other case. Harboring and

entertaining the respondents is against the safety of the public and their public policy.

12. An imperative duty is imposed upon these said Courts to exercise the powers conferred upon them by the said Articles of the United States Constitution and said Acts of Congress (XVIII, and cases cited therein). These duties may not be evaded in the instant suit because this petitioner happened to be a Greek and the conspirators American citizens; this petitioner may not be singled out and dealt with in the manners set forth in the certified exhibits, thus establishing prejudicial-racial principles which are contrary to the sprit of the XIVth Amendment to the United States Constitution (Amend. XIV, Sec. 1, Tit. 8, U. S. C. A. Civil Rights, Sections 41, 43, 47; Title 24. R. S. See Memorandum to C. C. A. 3rd C.; Tit. 28, U. S. C. A. Section 41, subdivisions: (1), (2), (12), (14), (17), (23). See pp. 23-26, former brief to C. C. A. 3rd C.; 103, 687, 688, 695, 725, 729; Title 15 U. S. C. A., Sections 1, 2, 15, 22, 24 et seq; See also the several sections of Title 18 U. S. C. A. quoted in the Appendix of the brief to C. C. A.; Section 5 of the Act of Congress of March 3, 1887, supra; State of Tennessee vs. Union Planters Bank, supra; U. S. vs. Thompson, supra; Ex Parte United States, supra; Ex Parte Peterson supra, and cases in point and cases cited therein.

13. The reason given by the District Court on Motion No. 5 is not supported by the facts, the notice of motion and motion papers thereon, the registered mail by which the respondents were served by this petitioner, and the appearance and participation in the argument of the respondent H. Collin Minton, Jr., attorney of record for himself and several of the other respondents and who insists that he appears for all of those defendants who are not represented by any other attorney.

14. (See the Order of the District Court on pages 17a-22a of the Appendix to the Brief C. C. A. 3rd C.) The reasons given by the District Court on motions numbered 2, and 3, are:

. . . ; except as provided in sections 113 to 118 of this title, (28 U. S. C. A.) no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; . . .

The foregoing clause is to be found in the second clause of section 112 (Judicial Code, section 51, amended) of Title 28 U. S. C. A., 28 U. S. C. A. 112. Civil suits; arrest in; district where brought; effective period.—(a).

The exceptions enumerated therein are:

Sec. 113 (Judicial Code, section 52.) Suits in states containing more than one district; Sec. 114 (Judicial Code, section 53.) Districts containing more than one district; transfer of criminal cases; Sec. 115. (Judicial Code, section 54.) Suits of local nature; Sec. 115. (Judicial Code, section 55.) Property in different districts in same state; Sec. 117. (Judicial Code, section 56.) Property in different states in same circuit; jurisdiction of receivers; Sec. 118. (Judicial Code, section 57.) Absent defendants in suits to enforce liens.

The provisions of the foregoing enumerated sections do not apply to the instant suit; nor does the inhibition found in the second clause of section 112 (Judicial Code, section 51, amended) apply to and govern the instant suit.

Turning to the Index of the *CODE OF LAWS OF THE UNITED STATES* (*of 1925*) we find:

CIVIL RIGHTS.

Action for deprivation of rights. Form of action, p. 123, Sec. 43, Jurisdiction, p. 867, Sec. 41 (12-14)
Persons liable, p. 123, Sec. 43

Conspiracy, p. 124, Sec. 47 (1), (2), (3)

Criminal Prosecution for denial or abridgment, see Crimes and Offenses

Enforcement proceedings governed by Federal Statutes, p. 935, Sec. 729

Review of proceedings for denial of civil rights, p. 123, Sec. 46; p. 895, Sec. 225; p. 906, Sec. 345.

It follows, therefore, that for the reasons and/or grounds which are present in the instant suit, the suit is governed by the provisions of the several sections of title 8, U. S. C. A. U. S. C. A. the cited sections supra; and 18 U. S. C. A. the sections quoted in the Appendix of the brief to C. C. A. 3rd C.; Secs. 1 to 7, 15, 22, 24 of Tit. 15 U. S. C. A.

It follows that for like reasons, the reasons given by the district court on motions numbered 2 and 3 are inapplicable to the instant suit.

It further follows that for like reasons, the reasons given by the District Court on its ruling on motion numbered 1, are inapplicable to the instant suit. See the Findings of Fact and Conclusions of Law of the District Court on pp. 17a-22a of the Appendix of the former brief.

There is but a single question determinative to the instant suit: Whether the instant suit is a proceeding for the protection of this petitioner herein and plaintiff in the district court in his civil rights, and for his vindication of those rights of which he has been deprived?

The Answer is to be found in the Complaint and exhibits submitted.

15. The employment conditions which resulted from the war now on hamper the operations of the respondents and their numerous associates and assistants and make it possible for this petitioner to prosecute this his cause; was

it not for the war he would not have been able to present his cause in any manner and form whatsoever. May it please the Court see the Record of Pleadings and Exhibits.

16. An Act of Congress of the United States (R. S. Sec. 1976.) provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, (- - - * * * *) or causes to be subjected, (* * * - - -) any citizen of the United States, (* * * - - -) or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable (* * * - - -) to the party injured in an action at law, suit in equity, or other proper proceeding for redress. Section 43 of Title 8, U. S. C. A. (R. S. Sec. 1979.)

The respondent Utah Fuel Company and its controlling and controlled corporations, in order to cover their sinister aims, and sinister operations, resorted to the use of the means which are set forth in the Complaint, pleadings, and exhibits thereof, subjected and subject, or (and) caused to be subjected, and do cause to be subjected this petitioner to the deprivation of the rights, privileges, or (and) immunities secured by the Constitution and Laws of the United States, thereby injured and continuously injuring this petition.

It must be presumed that the respondents in this proceeding and defendants in the District Court are liable to this petitioner in the action at law thus so legally brought and legally prosecuted in accordance with the Federal Rules of Civil Procedure following Section 723c of Title 28 U. S. C. A. This Proceeding for Redress is a proper proceeding within the meaning of the said Act.

By reason thereof and of the said provisions of the said

Act of Congress, the Provisions of Section 47 of Title 8, U. S. C. A. and the provisions of Secs. 1 to 7 of tit. 15, U. S. C. A., the Order of the District Court is tainted with prejudice, partiality in favor of the respondents and is so framed as to deny this petitioner the equal benefits of all laws and proceedings for the security of the person and property of this petitioner. (Sec. 41 of Tit. 8, U. S. C. A.; The 14th Amendment of the United States Constitution).

CONCLUSION.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this court of its supervisory powers in order that the errors herein pointed out may be corrected; that the law may be properly and authoritatively defined, applied, and construed, and that the Findings of Fact and Conclusions of Law of the District Court should be modified according to right and justice, and the Constitution and Laws of the United States; and the issues of fact and of law which arose or formed by the pleadings; and that the judgment of the Circuit Court of Appeals for the Third Circuit Affirming the Order of the District Court should be reversed in order that justice may be done to petitioner; and that to such an end a writ of certiorari should be granted and this court should review the decision of the United States Circuit Court of Appeals for the Third Circuit and finally reverse it.

Nicholas J. Curtis, LL. B.,
Petitioner Appearing in Person,
Post Office Box 972, Trenton,
New Jersey.

Dated this 29th day of December, A. D., 1942.

United States Circuit Court of Appeals

Third Circuit, Philadelphia, Pa.

NICHOLAS J. CURTIS,

Plaintiff-Appellant,

vs.

UTAH FUEL COMPANY, a corporation, its officers and agents, specifically; DR. E. R. MURPHY; DR. ROBERT S. ALLISON (deceased); DR. FRANCIS S. BASCOM (deceased); H. COLLIN MINTON, JR., and FERDINAND ERICKSEN, its attorneys; NICHOLAS J. PAPPAS, Paterson, N. J.; HELEN N. PAPPAS, Paterson, N. J.; SORTIRIOS NICHOLAIDIS, Paterson, N. J. (not served); HARRY SUSSMAN, Paterson, N. J.; WILLIAM V. ROSENKRANS, Paterson, N. J.; LOUIS BROWNLOW, Washington, D. C. (not served); CHARLES W. KUTZ, Washington, D. C. (in default); DR. PERCY HINKLING, Washington, D. C. (deceased); WILLIAM H. FAY, Washington, D. C. (cannot be found); WILLIAM J. HAZEN (MELVIN J. HAYS), Washington, D. C. (cannot be found); WILLIAM H. FOLLAND, Salt Lake City, Utah (in default; no motion or other pleading); DR. LESLIE J. PAUL, Salt Lake City, Utah (no appearance; in default); DR. SAMUEL WOLF, Salt Lake City, Utah (deceased); SIMON BAMBERGER, Salt Lake City, Utah (deceased, BAMBERGER COAL CO. substituted); DR. FREDERICK DUNN, Springville, Utah (appear by Special Appearance, name only); DR. FRED W. TAYLOR, Provo, Utah (no appearance; in default); DR. A. C. CALLISTER, Salt Lake City, Utah (appearance by Special Appearance, name only); DR. D. E. SMITH, Salt Lake City, Utah (appearance by Special Appearance, name only); CAROL C. JOHNSON, New York (Motion to Vacate); JOSEPH RIRIE, Salt Lake City, Utah (deceased); D. O. LARSON, Salt Lake City, Utah (no appearance; in default); CHARLES E. MAYBE, Salt Lake City, Utah (no appearance, name only on Special Appearance list, no Motion or Affidavit); MARK TUTTLE, Salt Lake City, Utah (no appearance; in default),

Appellees.

APPEAL FROM THE MEMORANDUM DECISION AND TWO ORDERS SIGNED AND ENTERED THEREON OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, NO. 728, CIVIL ACTION.

C. C. A. 3rd C. Case No. 8027.

NICHOLAS J. CURTIS, LL.B., Appellant,
Appearing in Person,
P. O. Box 972,
Trenton, New Jersey.

H. COLLIN MINTON, JR.,
Attorney for Himself, Utah Fuel Co., et als.,
Trenton Trust Building,
Trenton, New Jersey.

WILLIAM V. ROSENKRANS,
ROSENKRANS & ROSENKRANS,
Attorneys for Rosenkrans, et als.,
5 Colt Street,
Paterson, New Jersey.

CAROL C. JOHNSON,
Defendant, Absconding.

TABLE OF CONTENTS

page

1. Statement of the Questions Involved 1-7
2. Statement of the Case. "Introduction" 7-12
3. Statement of Facts 12-17
4. Argument of Appellant. II. Joinder of Parties Defendants ..18-21
5. Argument III. Jurisdiction of Subject Matter and of Parties 21-41
6. IV. Criminal Laws of United States Apply to All Conspiracies That Affect Private Rights 42
7. V. The Federal Courts Cannot Abandon Their Jurisdiction Properly Obtained of a Suit 42-43
8. VI. Laws of States as Rules of Decisions 43-44
9. VII. Exclusive Jurisdiction of United States Courts 44-45
10. VIII. Writs and Process. Power to Issue Writs for the Exercise of Jurisdiction. "Their Task" 45-47
11. IX. District Courts Cannot Refuse to Issue Writs Necessary for the Exercise of its Jurisdiction 47
12. X. Evidence (8 U. S. C. A. 41. 28 U. S. C. A. 687, 688, 695) .. 47
13. XI. Jurisdiction Under the Sherman and Clayton Acts 48-49
14. XII. Jurisdiction Under Civil Rights Acts 49-50
15 XIII. Federal Rules of Civil Procedure 50
16. XIV. Evidence. Acts, Declarations and the Records of the Courts and Judicial Proceedings Conclusive Proof 51-53
17. XV. Judicial Notice. 28 U. S. C. A. 687, 688, 695 54-55
18. XVI. The Process of the Court Below 55-65
19. XVII. Service of Process 65-75
20. XIX. Jurisdiction to Discharge Conspirators-Defendants ...76-78

20a. XX. Any General Distinction Between Perpetration and Procurement no Longer Obtains. (* * Clark, C. J. * *.) 78-79

21. XXI. Res Judicata (* * R. S. N. J. 25:2-3 * *) 80-82
22. XXII. The Inhibition of the Judiciary Acts of Mar. 3, 1887, et seq. 83
23. XXIII. The Entries of the Defaults 84-90
24. XXIV. The Refusal of Judge Walker to Consider the Exhibits Submitted to Him 90-91
25. XXV. Effect of Refusal to Apply and Construe Four Counts of the Complaint 91-92

page

26. XXVI. The Orders Entered on the Memorandum Decision ..92-94

27. XXVII. The Findings of Fact by the Court Below and Orders Entered Thereon Mere Nullities 94

28. XXVIII. The Assignment of Errors 95-98

29. XXIX. Appellant's Conclusions 99-101

30. Appendix. Order Extending Time to File Brief, Maris, C. J. 1a

31. The Practice Followed as to this "Work," U. S. S. Ct. Rules. R. 27, 2, (f) 2a

32. U. S. Constitution, Articles of 2a

33. Laws of U. S. Invoked by Appellant. * * Laws of U. S. * * Include the * * Judicial Decisions * * of the U. S. Cts. In the Notes 3a-16a

34. The Memorandum Decision of Walker, District Judge ...17a-22a

35. Notice of Order by Carol C. Johnson 23a
Order on Said Notice 24a

36. Order Obtained by Addison P. Rosenkrans in Behalf of Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans 25a

37. Unsigned Order and Docket Entries Drafted and Submitted to the Clerk of the Court Below by Appellant 27a-33a

38. Praecipes (3). For Defaults of Pleadings 33a

39. Defendants Where Served and Methods of Services and Dates. The Order of the Clerk is taken from the Brief of the Utah Fuel Co. as filed in this Court in the First Appeal 33a-34a

40. Order Extending Time for Assignment of Errors, etc. Biggs, Maris, and Clark, J. J. 35a

41. Court's Opinion in Case No. 7929. * * Petition will be * * Dismissed, etc. 36a

42. Letter from Mr. Rowland, Clerk, C. C. A. 3rd C. "The Court states it will accept your Brief in the Extended Form, as requested" 37a

43. Memorandums of Appellant Abstracting the Exhibits Submitted 38a-51a

"STATEMENT OF ACCEPTANCE."

44. At the "Outset" Appellant Accepts the Memorandum Decision of the Court Below insofar as it holds the Defendant, Utah Fuel Company, to 17 Counts of the Complaint. "Head Note to the Questions Involved."

CASES CITED

	page
Alabama Power Co. v. Stogner	92
Alexander v. United States	20
Amalia, The	25
American Fur Co. v. United States	52
Armour Packing Co. v. United States	28
Atchison, Topeka & Santa Fe Railway Co. v. Wells	87
Atkin v. Disintegrating Co.	83
Atlantic Coast Line R. Co. v. State	59
Austin v. Riley	86
Backwell's Case	30
Bakun v. United States	20
Baldwin v. Bank	52
Ball v. Reese	81
Bannon v. United States	32
Barnes v. Montana Lumber and Hardware Co.	94
Barry v. Admonds	37
Bates v. Independent School Dist.	22
Baum, Matter of	76
Bell v. Sheldon	94
Benson v. Henkel	28, 32
Boulton v. Scott's Adm's	82
Bowser v. Daro, et al.	74
Boyd v. United States	51
Brenner v. Title Guarantee & T. Co.	80
Brown v. Elliott	28, 57
Brown, Ex P.	29
Brown v. Southern Pacific Co.	18
Brown v. United States,	51, 52, 60
Burton v. Johnson	93
Burton v. United States	31, 33
Buttler v. State	61
Cae v. Armour Fertilizer Works	80
Cain v. Goda	94
* * Calahan v. United States * *	33, 36, 68, 78
Calcutt v. Gerrig	9a
Campbellsville Lumber Co. v. Hubbert	49, 50
Cane v. Lieberman	93
Carroll v. Fullerton	80
Carron v. Martin	94
Carter v. Greenhow	24
Cartheu, in re	30
Central R. R. Co. v. Central Trust Co.	85
Chicago, etc. R. R. Co. v. Summers	94
Christopher v. Sisk	80
Chulis v. Lehigh Valley Coal Co.	71
City of New York v. Furze	30

page

Civil Rights Cases 24
Clancy v. Balacier, et al. 74
Clark v. Mutual Reserve L. Ins. Co. 94
Clay County Court v. Baker 94
Clifton v. Tombs 84, 86
Clune v. United States 52
Connecticut Mut. Life Ins. Co. v. Hullmon 52
Continental Illinois Nat. Bank & T. Co. v. Chicago, etc. 31
Continental Life Ins. and Inv. Co. v. Jordan 72
Cook v. Brown 94
Cooper Mfg. Co. v. Ferguson 35
Cresswell v. Lanahan 53
Cretsch v. United States 33
Cullough v. Colfax County, Neb. 59
Curtis v. Collis Bros. 44
Curtis v. Others, 11 cases 64

Daeck v. United States 11a
Dayton v. Monrae 94
Dennick v. Central R. R. Co. 34
Dennis v. Pease 80
Derosia v. Farland 92
Doughty v. Doughty 81
Dringer v. Erie Ry. Co. 82

Easterday v. McCarthy 12a
Eastman Kodak Co. v. Southern Photo Materials Co. 36
Edmonds v. Glenn-Colusa Irreg. Dist. 8
Eichel v. United States 62
Ervin v. Oregon Ry. & Nav. Co. 79
Estate of Pusey, re 94

Farmer v. Crosby 79
Federal Housing Administration v. Jackson 86
Felder v. United States 10a
Ferguson v. Wilson 79
Flementis Case 43, 44
Fleming v. Commonwealth 61
Fletcher v. United States 10a
Floyd v. Floyd 81
Forbes v. Hyde 94
Frey & Son, Inc. v. Cudahy Packing Co. 68
Friend v. Hamill 22
Frow v. DeLa Vega 85
Frow v. Wooster 84
Funk v. United States 71

Geer v. Mathuson Alkali Works 79
General Investment Co. v. Lake Shore & M. S. Ry. Co. 49, 63

page

Griggs v. Bolton 31
Ginsberg v. United States 20
Goodreich Transit Co. v. City of Chicago 93
Grabboyes v. United States 21
Grayson v. United States 31, 9a, 11a
Great Western Gold Co. v. Chambers 92
Gretsch v. United States 21
Griminger v. State 32

Haas v. Henkle 31, 57
Hagen v. United States 9a
Hague v. Committee of Industrial Organization 37
Hamburg American Steam Packet Co. v. United States 9a
Hanna v. Ewing 94
Hansen Packing Co. v. Armour & Co. 35
Harrington v. United States 12a
Haskel v. Aluminum Company of America, et al. 68
Hefner v. North Western Mut. Life Ins. Co. 87
Henderson v. Daniels 94
Hollister v. Young 93
Holt v. Indiana Mfg. Co. 24
Horner v. United States 28, 31, 33
Hubard v. Todd 53
Hulsecamp v. Teel 37
Hyde v. Shine 31, 59
Hyde v. United States 31, 32, 33, 56, 58, 12a

Interstate Commerce Commission v. Daley 86
Ireland v. Henkle 11a

Jeffery-Nichols Motor Co. v. Hupp Motor Corp. 36
John Gund Brewing Co. v. United States 45
Johnson v. State 61
Jones v. Missouri Edison Electric Co. 79
Jordan, Ex Parte 29
Jung Quey v. United States 9a

Katz Drug Co. v. Shaeffer Penn Company 35
Kelley v. McKenna 93
Kennely v. Jersey City 30
King v. Emmons 81
King, The, v. Inhabitants 30

Lamar v. United States 31, 33
Lancaster v. Pitts 61
Land Co. v. Votaaw 93
Last Chance Min. Co., et al. v. Tyler Min. Co. 87
Le Clair v. Calls Him 91

page

Leon v. Kerrison 93
Lewis v. State 61
Lincoln v. Claflin 51, 60, 78
Lindley v. Denver 93
Loft, Inc. v. Corn Products Refining Co. 62
Logan v. United States 51, 52, 60
Louis Pizits Dry Goods Co. v. Cusiman 92
Louisville, etc. R. Co. v. Smith 92
Louisville Underwriters, re: 83
Lynch v. Magnavox Co. 27

Marcus v. United States 21
Marino, et al. v. United States 21
Marrin v. United States 10a
Mason, et al. v. Fearson 30
Melckon v. Collins, et al. 71
Merchants Bank v. State Bank 53
Mereweather v. Gregory 94
Merill v. Rokes 93
Mildiken v. Thyson Comm. Co. 92
Mining Co. v. Anglo-California Bank 53
Minnesota v. Northern Securities Co. 48, 63, 75
Minor, et al. v. The Mechanics' Bank 30, 52
Mitchell v. Greenough 27, 31, 49
Mitchell v. Harmony 34
Montgomery Branch Bank v. Knox 32
Morris-Turner Live Stock Co. v. Director Gen. of Railroads 23
Morrison v. Clark 92
Morrison, Ex Parte 92
Morrow v. United States 58
Murray v. The Charming Betsy 25
McClaine v. Rankin 49
McClelland v. Garland 43
McCloskey v. Strickland 91
McDermott v. Halleck 93
McKenna v. Fisk 34
McNally v. Simons, et al 18

National Surety Co. v. Mulligan 82
Nereide, The 26
New Orleans v. Gaines (New Orleans v. Whitney) 81
Newburgh T. Co. v. Miller 30
Newton v. Jasper County 30
Nixon v. Herndon 37
Nobile v. United States 21
Nudd v. Burrows 51, 60
Nugent v. Hayes 82
Nuguist v. United States 9a

page

O'Brien v. Lashar 84, 86
Orleans v. Platt 52

Page v. United States 20
Palliser, In re: 31, 33
Pell v. McCabe 62
People v. Brooks 30
Peoples Tobacco Co. v. American Tobacco Company 35, 63
Peterson, Ex Parte 71
Philadelphia, etc. R. Co. v. Quigley 52
Pleasants v. Greenhow 24
Pollard v. Minton 53
Pon Wing Quong v. United States 20
Post, Matter of 76
Prescott, etc. R. Co. v. Atchison, etc. R. Co 91
Price v. Sixth Dist. Agri. Asso. 80
Putnam v. United States 32, 53

Radin v. United States 29
Ragsdelle v. Rudich 37
Railroad Co. v. Howard 52
Reese v. Qualtrough 19
Reg. v. Greenwood 62
Rest. v. De Long Champs 25
Riele v. Margolies 80
Riley v. Loughrey 94
Riley v. Policemen's Pension Fund 80
Rizzo v. United States 21
Robertson v. Railroad Labor Board 69
Robinson, et al. v. United States 20
Roesel v. State 62
Rogers v. Mexico City Banking Co. 94
Rose Calester, Appt. v. Interstate Fidelity Bldg. & Loan Association of Utah 87
Rosenkrans, re: 76
Royal Organum v. Carley 82
Rudner v. United States 9a, 11a
Ruffin Coal, etc. Co. v. Rich 92
Ruthenberg v. United States 20
Ryan v. United States 12a
Ryland v. Hollinger 91

Schenk v. United States 8a
School District v. Stone 22
Schrader v. United States 20
Schummacher v. Negberg 93
Shields v. Barrow 48, 75
Simon v. Henke 82

page

Simonton, Ex Parte 30
Simpson v. United States 8a
Skinner v. Argentina Twp. 80
Slackpole v. Hallahan 30
Smith v. Kansas City Title & Trust Co. 49
Smith v. Swart 82
Smithers v. Smith 37
Snydam v. Broadnax 42
Sodine v. Sodine 87
Southern Photo Material Co. v. Eastman Kodak Co. 68
St. Louis Merchants' Bridge Terminal Ry. Co. v. Schuerman 93
Standard Oil Co. v. United States 68
State v. Blake 18
State v. Carlino 62
State v. Crow 94
State v. De Bellis 62
State v. Dobow 62
State v. Fisher 79
State, Ex rel, Greaves v. Henry 31
State v. Hanraha 62
State v. Kent 30
State v. King 18
State v. Morgan 18
State v. Rodosta 32
State v. Spencer 62
State v. Town 32
State v. Warady 62
State v. Wilson 62
State v. Woodworth 62
Subold, re: 31, 45
Sullivan v. Felix 49
Sullivan's Case 43
Sutton v. United States 21
Sweeney v. Miner 92

Talbot v. Seaman 25
Thomas v. Byth 19
Thomas Fruit Co. v. Livergood 79
Thomas v. United States 9a
Thompson v. Wooster 85, 86
Tillinghas v. Richards 12a
Tomkins v. Tomkins 82
Tootle v. McClellan 88
Touhy v. United States 21
Tub City Min. & Mill. Co. v. Otterson 87

Union Bank v. Jolly's Administrators 42
Union Garage Co. v. Ganely 92

page

United Cigar Whelan Stores Corp., et al. v. United States 20
United Cigarette Mach. Co. v. Winston C. Mach. Co. 79
United States v. Alaska Cons. Canneries 32
United States v. Babcock 78-79, 9a
United States v. Bakes 20
United States v. Barrett 9a
United States v. Bergdoll 9a
United States v. Butler 9a
United States v. Campbell 21
United States v. Cassidy 57, 79, 9a
United States, Ex Parte 70, 78
United States v. Freeman 31
United States v. Fullheart 31, 45
United States v. Gooding 51, 52, 60, 61
United States v. Haris 59
United States v. Hodorowicz 20
United States v. Howell 11a
* * United States v. Jacobson, et al. * * 67
United States v. Johnson 79
United States v. Jordan 21
United States v. Kissel 28, 29, 31
United States v. Lombardo 32
United States v. McCarthy 12a
United States v. Merriam 31
United States v. Mooney 83
United States v. Morris 59
United States v. National Malleable & Steel Casting Co. 11a
United States v. Noblom 9a, 11a
United States v. Olmstead 57-58
United States v. Rabinowich 58
United States v. Reddin 12a
United States v. Rindsopf 12a
United States v. Sacia 9a
United States v. Sanch 42
* * United States v. Silverman * * 20, 68
United States v. Socony Vacuum Oil Co. 27
United States v. Standard Oil Co. 48, 63, 75, 78, 83
United States v. Thman 30
* * United States v. Trenton Potteries * * 34
United States v. Union Pacific Railroad Co. 69
United States v. Wiltberger 58
United States v. Young & Holland Co. 61
United States Bank v. Dandridge 52
Utah Fuel Co. v. Ind. Comm. (2 cases) 43, 44

* * Vacuum Oil Co. v. Eagle Oil Co. * * 34, 60
Van Horn v. Van Horn 82
Vannata v. United States 9a

page

Van Patten v. Chicago, Milwaukee & St. Paul R. Co. 83
Venner v. Pennsylvania Steel Co. of New Jersey 21, 62, 68
Voorhees v. Bank 94

Wagner v. Brady 92
Wagner Nat. Bank v. Welch 93
Wainer, et al. v. United States 21
Walf, In re: 23
Warder v. Whitall 92
Weil v. Defenbach 81
Welch v. Mandeville 81
Wernwag v. Pauling 80
West Wisconsin Co. v. Foley 30
White v. Texas Co. 18
Wilder v. United States 26, 31, 63, 10a
Wiley v. Sinkler 37
Wilson v. Sullivan 18, 19
Wilson v. United States Lines 62
Wing v. United States 12a
Wolcott v. Wigton 93
Wright v. Schick 80

Young v. United States 21

STATUTES CITED, QUOTED AND SET OUT

United States Constitution
Article IX, Sec. 1 .....90, 2a
Article I, Sec. 9 .....96, 2a
Articles IV, V, VIII, XIV 96, 2a

United States Supreme Court Rule
Rule 27, 2, (f) 2a

1 U. S. C. A.
Sec. 54(a) 22

8 U. S. C. A.
Secs. 43, 47 .....27, 49
Civil Rights Acts Construed, et seq. Biggs, C. J., Roberts, S. Ct. J. 37
Secs. 41, 43, 47 .....56-57, 59, 96
Sec. 47 .....78, 3a-4a
Secs. 41 and 43 in full 3a

15 U. S. C. A.
Sherman & Clayton Acts 34, 48
Sec. 15 .....35, 49, 78
Sec. 22 35

page

Sec. 24 78
Secs. 1, 2, 3 36
Secs. 1 to 7, 15, 22, 24, 26 .....59, 60, 61, 63, 96
Sec. 22, Venue 61-62
Sec. 22 66
Sec. 5 .....63, 66, 71
Sec. 25 66
Anti Trust Act 66
Clayton Act 68
Secs. 1, 3, 4 in full 4a
Secs. 5, 15, 24 ..... 5a

Title 15 U. S. C. A., Sec. 4, Fed. Rule 64. Seizure of Persons or Property.

At the commencement of and during the course of an action, all remedies . . . are available, . . . Existing Statutes of United States governs to the extent to which it is applicable . . .

15 U. S. C. A., Sec. 5, Fed. Rule 4. Process applies to and governs the proceedings. U. S. C. A. 28, Table II, p. 2609.

18 U. S. C. A.
Secs. 231, 232, 550 20
Secs. 52, 54, 88, 231, 232, et seq. 36, 50, 96
Sec. 546 50
Sec. 550 .....67, 78, 96
Sec. 88 .....67, 96
Sec. 52 in full 6a
Sec. 54 in full 7a
Sec. 88 in full 7a-8a
Sec. 231 in full 12a-13a
Sec. 232 in full 13a
Sec. 237 in full 13a
Sec. 242 in full 14a
Sec. 338 in part 15a
Secs. 443, 444, 445 ..... 15a
Sec. 550 in full 15a
Sec. 408 in full 16a

28 U. S. C. A.
Sec. 41 90
Subds. (1), (2) 23
Subds. (12), (14) 24
Subd. (17) 25
Sec. 41 ..... 6a
Subd. (1) 49
Sec. 41 .....57, 59, 96

page

Sec. 41, Subd. 1(a) and Subd. 1(c) 18a
Cited by Walker, J.
Sec. 112, cited by Walker, J. 20a, 21a

28 U. S. C. A.
Sec. 103 .....29, 31, 33, 36, 47, 56, 59, 60, 63, 67, 71, 73, 96
Sec. 103 in full 6a, 8a, 16a

28 U. S. C. A.
Sec. 371 .....44, 96
Sec. 371 in full 15a, 16a
Sec. 377 .....45, 96
Sec. 504 72

28 U. S. C. A.
Sec. 725 .....28, 36, 43, 47, 57, 65, 71, 73, 96
Sec. 725 in full 6a

28 U. S. C. A.
Sec. 723 c 18, 86, 87, 91

28 U. S. C. A.
Secs. 687, 688, 695 .....47, 54, 90, 96

28 U. S. C. A.
Sec. 729 .....22, 46, 55, 57, 59, 60, 66, 70, 71, 96, 6a

Federal Rules of Civil Procedure (28 U. S. C. A. Sec. 723)
Rule 20 18
Rule 4(e) 62, 66
Rule 4(d) (7) 65, 74, 96
Rule 81(e) 65, 74
Rule 4(f) 74
Rule 60(b) 89
Fed. Rules Generally. See "Typed Record of Pleadings;" the "Printed Parts of the Record of Pleadings." 95

Revised Statutes of Utah
104-3-13 18
Ch. 11, Criminal Conspiracy 28, 43
Industrial Act 43
Vice Principal, Tit. 49 43
Tit. 103, Penal Code 43
104-5-3 72
104-5-4 .....72, 73
104-5-5 73
104-5-11 73
104-5-18 73
42-1-50 89
49-6-1 89

Acts of Congress Cited

	page
Revised Statutes of New Jersey	
2:119-1	27
2:119-1, 2	81, 96
25:2-3, Conveyances Void	81
Conspiracy. Civil Liability	82
2:27-191	88
2:27-292	88
2:27-192	88
United States Revised Statutes	
Sec. 722	22
Sec. 563	23
Sec. 5450	26
Sec. 731	28
Sec. 716	45
Sec. 905	54
Sec. 906	55
Sec. 1980	78
Sec. 5323	78
Sec. 5510	6a-7a
Sec. 5518	7a
Sec. 5440	8a
Sec. 5406	15a
Secs. 5480, 5323, 5427	15a
Sec. 722	16a

ACTS OF CONGRESS CITED

March 2, 1871, c. 26; June 7, 1880, No. 44; April 9, 1890	23
March 3, 1875; Mar. 3, 1911, c. 231, Sec. 24	23
Aug. 13, 1888, c. 866, Sec. 1; Mar. 3, 1911 c. 231, Sec. 24	24
Mar. 3, 1911, c. 231, Sec. 24	24
Mar. 3, 1911, c. 231, Sec. 24, par. 23	26
Mar. 3, 1911, c. 231, Sec. 42	28
Mar. 3, 1911, c. 231, Sec. 262	45
April 20, 1871, c. 22 Secs. 1, 2	49
Mar. 27, 1804, c. 56, Sec. 2	54
June 20, 1936, c. 640, Sec. 1	55
Mar. 4, 1909, c. 321, Sec. 340	57
Oct. 15, 1914, c. 323, Sec. 15	66
July 2, 1890, c. 647, Sec. 5	71

page

Mar. 4, 1909 c. 321, Sec. 332 78

Mar. 3, 1887, c. 373 83

Aug. 13, 1888, c. 866, Sec. 1 83

Mar. 4, 1909, c. 321, Sec. 21 ..... 7a

May 17, 1879, c. 8 ..... 8a

Mar. 4, 1907, c. 371, Sec. 37 ..... 8a

Mar. 4, 1909, c. 321, Sec. 136; Sec. 332 ..... 15a

Oct. 29, 1919, c. 89, Secs. 1 to 5 ..... 16a

Mar. 3, 1911, c. 231, Sec. 42 ..... 16a

AUTHORITIES CITED

Foster's Federal Practice, Sec. 111, p. 405 79

Hopkin's New Federal Penal Code, Sec. 546 57-58
Venue 59

Hughe's Federal Practice
Sec. 1775 49
Sec. 6521 50
Sec. 1776 57
Secs. 18911, 18912 65
Secs. 18913, 18993 66
Sec. 18914 74
Sec. 7232 91

TEXTBOOKS CITED

	page
Coke Institute 167	20-21
Cooley on Torts, Vol. 1, Ch. V, p. 19	79
Dickinson Ch. Pr. 34	89
Bishop's Criminal Laws, Secs. 1056, 1197	20
Harris, G. S., 1939, Pl. & Pr. in N. J., Secs. 582, 391, 599, 272	88
Kocher & Tryer, N. J. Ch. Pr., C. VI, Sec. 250	88
Moore's Fed. Pr., page 3159	89
Stroud Jud. D.	29
Wharton on International Law	25
(30 Am. Jur., p. 941, Sec. 202)	80
Freeman on Judgments, p. 1545, Sec. 731	91
Secs. 378, 386, 175-193	91
Sec. 322	94
(38 C. J.), p. 520	76
(17 C. J.), p. 1153	32
(25 C. J.), p. 679	23
(36 C. J.), p. 959	23
(71 C. J.), p. 43	43
(25 R. C. L.), Sec. 15, p. 29	88
Secs. 461, 667, 669, 987	87
(Cyc.), p. 628	42
(31 Cyc.), p. 670	93
(23 Cyc.), p. 816	93

STATEMENT OF ACCEPTANCE BY APPELLANT.

The Findings of Fact and Conclusions of Law so made by the Court below, insofar as the decision holds the defendant, Utah Fuel Company, responsible on Seventeen Counts of the Complaint.

The defendant, Utah Fuel Company, having been adjudged responsible for the acts and facts set forth on Seventeen Counts of the Complaint, have had a right to appeal there from said decision to this Court and to file its Grounds of Appeal with the Clerk of the Court below within three months after the date of entry of said Memorandum Decision; and having not done so, it must be strictly held to the same thereof for the reason that this Court has acquired no jurisdiction for such an appeal.

The Appellant bases this, his Statement, on the following Authorities and cases cited and cases in point, to-wit:

Hughe's Federal Practice, Sec. 27021.—Necessity of Notice of Appeal. An appeal must be properly perfected, citing McBee v. Palmer, C. C. A. Wash. 1935, 73 F. 2d 342.

Members of the Bar of an Appellate Court are bound to know the rules of the Court. A failure to docket a case in accordance with those rules, because of alleged lack of knowledge thereof, will not excuse a failure to comply with them. R. 74, Joint or Several Appeals to a Circuit Court of Appeals.

28 U. S. C. A., Sec. 230.—Time for Making Application for Appeal. No appeal intended to bring any judgment or decree before a Circuit Court of Appeals for review shall be allowed unless application therefor be duly made within three months after the entry of such judgment or decree. (Mar. 3, 1891, Ch. 517, Sec. 11, 26 Stat. 829; Feb. 13, 1925, Ch. 229, Sec. 8(c), 43 Stat. 94; Jan. 31, 1928, Ch. 14, Sec. 1, 45 Stat. 54.)

Hughe's Fed. Pr., Sec. 27014. Within the time prescribed the Notice of Appeal by which one initiates an appeal to a Circuit Court of Appeals must be filed within the time fixed by statute for appealing or the Court of Appeals acquires no jurisdiction of the cause, citing Chase v. Holmes, 19 Cal. App. 670, 127 P. 652, other cases follow here.

The general statutory rule is that one must initiate appellate procedure to a Circuit Court of Appeals within three months after the date of entry of any judgment or decree he wishes to appeal to a Circuit Court of Appeals, citing 28 U. S. C. A., Sec. 230.

Hughe's Federal Practice, Sec. 27016.—May Appeal From. An "Appeal" is the removal of a cause from one judicial tribunal to a higher tribunal for review of the proceedings in the lower court. City of Birmingham v. Louisville & N. R. Co., 213 Ala. 92, 104 So. 258.

STATEMENT OF THE QUESTIONS INVOLVED.

I. What is the nature of the action?

II. Were the defendants in the suit properly joined?

III. Has the Court below jurisdiction of the subject matter and of the parties?

IV. Are the offenses which are denounced by the Criminal Statutes of the United States confined to such acts as injure the United States, or they are applying as well to all conspiracies that affect private rights?

V. Has the Court below the power or any legal right to refuse to exercise the power conferred upon it by the law found in Sections 729 and 103 of Title 28 U. S. C. A.?

VI. Has the Court below the power or any legal right to refuse to exercise the power conferred upon it by the law found in Section 725 of Title 28, U. S. C. A.?

VII. Has the Court below the power or any legal right to refuse to exercise the power conferred upon it by the law found in Section 371 of Title 28, U. S. C. A.?

VIII. Has the Court below the power or any legal right to refuse to exercise the power conferred upon it by the law found in Section 377 of Title 28, U. S. C. A.?

IX. Has the Court below the power or any legal right to refuse to exercise the power conferred upon it by the law found in: a. The last sentence of Subd. (1); b. Subd. (2); c. Subd. 12; d. Subd. 14; e. Subd. 17; f. Subd. 23 of Section 41 of Title 28, U. S. C. A.?

X. Has the Court below the power or any legal right to refuse to exercise, apply and construe the power conferred upon it by the law found: a. In Section 687; b. Section 688; c. and Section 689 of Title 28, U. S. C. A.?

XI. Has the Court below the power or any legal right to refuse to exercise, apply and construe the power conferred upon it by the law found in Sections 1, 2, 4, 5, 15, 22, and 24 of Title 15, U. S. C. A.?

XII. Has the Court below the power or any legal right to refuse to exercise and enforce or apply and construe the law found in Sections 41, 43, and 47 of Title 8, U. S. C. A.? Also Sections 52, 54, 88, 231, 232, 237, 238, 242, 243, 244, 245, 408, "550," and 571 of Title 18, U. S. C. A.?

XIII. Has the Court below the power or any legal right to refuse to exercise and enforce or apply and construe the Federal Rules of Civil Procedure for the District Courts of the United States?

XIV. Are the acts and declarations, statements and charges (see page 29 of the Complaint) of H. Collin Minton, Jr., as by him made in open Court and in the prosecution of the enterprise or conspiracy considered the acts of all the co-conspirators? Also the acts of the Defendant William V. Rosenkrans as by him made in open Court on the 22nd day of April 1940, as well as in all the cases filed against him and his co-conspirators in the court below; also those with which he executed and carried on the conspiracy before the Paterson District Court, so as to constitute overt acts committed within the jurisdiction of the Court below and to give it jurisdiction of the subject matter and of all the parties defendants?

XV. Does the miscarriage of the administration of justice by the Court below and the State Courts in the following cases, namely:

1. Curtis vs. Pappas, et als., Paterson District Court, Paterson, N. J.

2. Curtis vs. Peraino, 4th Judicial District Court Bergen County, Village of Ridgewood, Bergen County, New Jersey, two cases.

3. Village of Ridgewood vs. James Damis, Court of Chancery of New Jersey. Material parts of the case photostated and are in the Photostated Record in this Court.

4. Curtis vs. Peraino, Circuit Court of Bergen County, New Jersey.

UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY.

Cases in which Nicholas J. Curtis is or was a party:

E-2331. Curtis vs. American Tel. & Tel. Co., et als. Order dismissing case without costs.

E-4129. Curtis vs. Citizens Nat. Bank & Trust Co., et als. Order dismissing case pursuant to General Rule 27.

E-5108. Curtis vs. Minas Candaras, et al. Order dismissing case with costs to defendants.

L-1722. Curtis vs. Paramount Famous Lasky Corp., et als. Order dismissing case.

L-4628. Curtis vs. Pappas, et al. Order striking out complaint with costs to defendants.

L-4759. Curtis vs. Pappas, et als. Order dismissing case pursuant to Rule 27.

L-5773. Curtis vs. Utah Fuel Company. Order granting motion to strike complaint and dismissing motion for rehearing.

L-728. Curtis vs. Utah Fuel Company, et als., now under consideration,

constitute overt acts sufficient for jurisdictional requirements to give the court below jurisdiction of the subject matter and of all the parties defendant in or to the action; and to bring the action within the jurisdiction conferred on the District Courts by the provisions of Chapter 3 of Title 8, and Title 18 for the protection of all persons in the United States in their civil rights, and for their vindication; also within the jurisdiction conferred on the Court below by the provisions of Sections 1 to 7, 15, 22, and 24 of Title 15, U. S. C. A.?

XVI. Were the nonresident defendants amenable to the process of the Court below?

XVII. Were the nonresident defendants properly served in accordance with any law of the United States?

b. In accordance with the laws of the State and District wherein services were made?

c. In accordance with the provisions of Federal Rule 4 (d) 7?

XVIII. Is the exercise of the power or jurisdiction conferred upon the Court below by the Constitution; the law found in Sections 41, 43, and 47 of Title 8, U. S. C. A.; the several sections of Title 18, U. S. C. A., particularly Section 550 of said Title 18; and

Sections 103, 725, 729, 371, 377, 41 last sentence of Subd.

(1), Subds. (2), (12), (14), (17), and (23) of Section 41 of said title 28, U. S. C. A., which statutes empower the court below to acquire jurisdiction of controversies on the nature of those set forth in the Complaint, discretionary with the court below, when a party plaintiff demands their protection and benefits?

XIX. Has the Court below any power, right, jurisdiction or authority to try Counts No. 2, 21st, and 22nd of the complaint on the motion of a lawyer who has been tried for fraud and for victimizing others, tried and convicted by the Court of Chancery of the State of New Jersey? Because of the defense put in by Rosenkrans for Harry Sussman, defendant out of district and never served, the present motion is also false, can the court below try such questions of fact on a false motion?

XX. Are members of the Bar (referring to H. Collin Minton, Jr., and Addison P. Rosenkrans and William V. Rosenkrans), who are aware of conspiracy of their clients and others to obstruct justice and accomplish unlawful purposes in litigations in which they are employed as attorneys, and who proceed there with them in the court wherein the conspiracy suit is pending, and aid, abet, counsel, command, induce or procure the obstruction of justice in the court which has the case under consideration, not responsible or answerable for their parts in the plot or conspiracy?

XXI. May the doctrine of Res Adjudicata be used as bases for a judgment which is obtained by concerted action, false swearing, fraud, collusion, and the introduction of the record of the case now under consideration in the Court below and in this Court in its early stage (see

Curtis vs. Utah Fuel Company, U. S. D. Ct., D. of Utah)?

XXII. Does the inhibition of the Judiciary Acts of March 3, 1887, c. 373, 24 Stat. 552, and Aug. 13, 1888, c. 866, Sec. 1, 25 Stat. 733 (Comp. St. (U. S.) 1901, P. 508), that no civil suit shall be brought before either of said Courts (the Circuit Courts and District Courts) against any person by any original process or proceeding in any other district than that whereof he is an inhabitant, apply to and govern suits brought under the several sections cited in Points V to XII above?

XXIII. Assuming that the Court below had jurisdiction of the subject matter and of the parties, what is the general effect of the entries of the defaults against the eight (8) defendants in default?

XXIV. Is the refusal of the Court below to consider the Records and Judicial Proceedings which are the several acts and overt acts constituting in whole of the conspiracy set out in the Complaint and subsequent pleadings filed and exhibits submitted, duly certified by the proper authorities and duly submitted to it in proper form, a violation of any law of the United States?

XXV. What effect has the refusal of the Court below to recognize on the findings of fact and conclusions of law, and consider or apply and construe the Third, Fourth, Fifth, and Sixth Counts of the Complaint?

XXVI. What is the result or the effect of the refusal of the Court below to consider and construe the Sixth and Conspiracy Count of the Complaint and the exclusion of the same from its findings of fact and conclusions of law?

XXVII. Should the action be proceeded with without four of its best Counts be considered by the Court below?

STATEMENT OF THE CASE.

Introduction.

(a) (10 Inter. Rev.)
(Stamp. Can.)
UTAH COAL AND COKE COMPANY.

(Name changed to Utah Fuel Company eleven days after the date it was incorporated.)

(a) Certificate of Incorporation.

ARTICLE I. The corporate name is
"UTAH COAL AND COKE COMPANY".

ARTICLE II. The principal office is at No. 60 Grand Street, Jersey City. The agent therein, in charge thereof, is the Corporation Trust Company of New Jersey, upon whom process against the Corporation may be served.

ARTICLE III. The objects for which the corporation is established are:

(a) To purchase, lease or otherwise acquire coal mines or rights, coal lands or other lands convenient to the business of the Company in the State of Utah or elsewhere and any interest therein and to explore, develop and work the same; to buy, sell, manufacture and deal in coal and

various products thereof; to acquire for the business of the Company water power and to operate the same; to let out to others any part of the property of the Company; to acquire, own and operate stores for the sale of supplies to miners and employees of the Company; to acquire the stock of any Company owing such store or stores; to acquire the stocks, bonds and other securities of other coal mining companies or off other companies the business of which shall be related to or useful to the business of the Company.

The following clauses shall be construed both as objects and powers:

(b) To manufacture, purchase, or otherwise acquire goods, wares, merchandise and personal property of every class and description, and to hold, own, mortgage, sell or otherwise dispose of, trade, deal in and deal with the same.

(c) To acquire and undertake the goodwill, property, rights, franchises and assets of every kind and the liabilities of any person, firm, association or corporation, either wholly or partly, and to pay for the same in cash, stock of the corporation, bonds, or otherwise.

(d) To enter into, make, perform and carry out contracts of every kind and for any lawful purpose with any person, firm, association or corporation.

(e) To borrow or raise money without limit as to amount by the issue of or upon debentures or debenture stock, or in such other manner as the corporation shall think fit.

(f) To draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, warrants, bonds, debentures and other negotiable or transferable instruments.

(g) To apply for, register, purchase, or otherwise acquire, and to hold, own, use and operate, and to sell, assign, grant licenses in respect of, or otherwise dispose of and deal with and turn to account any and all inventions, improvements, formulae, processes, trade names and trade marks, copyrights, letters patent of the United States and of any or all foreign countries, and patent rights of all kinds.

(h) To conduct business in any of the states, territories, colonies or dependencies of the United States, in the District of Columbia, and in any and all foreign countries, to have one or more offices therein, to hold, purchase, mortgage and convey real and personal property without limit as to amount, in any such state, territory, colony, dependency, district or foreign country, but always subject to the laws thereof.

(i) To remunerate any person or corporation for services rendered, or to be rendered, in placing or assisting to place or guaranteeing the placing of any of the shares of stock of the corporation, or any debentures or other securities of the corporation, or in or about the formation or promotion of the corporation or in the conduct of its business.

(j) To do any or all of the things herein set forth to the same extent as natural persons might or could do, and in any part of the world.

(k) To mortgage its property or any part thereof in order to secure its own indebtedness or any other indebtedness or any obligation direct or collateral where such mortgage shall be approved as beneficial to the interests of the Company by the holders of not less than two thirds of the outstanding capital stock of the Company.

(l) To guarantee the payment of dividends or interest on any shares of stock or other securities issued by any other corporation whenever the Board of Directors shall approve such guaranty as in its judgments necessary or proper for the business of the corporation.

(m) In general, to carry on any other business in connection with the foregoing, whether manufacturing or otherwise, and to have and to exercise all the powers conferred by the laws of New Jersey upon corporations formed under the act hereinafter referred to; it being hereby expressly provided that the foregoing enumeration of specific powers shall not be held to limit or restrict in any manner the powers of the corporation.

The duration of the corporation shall be unlimited.

ARTICLE IV. The corporation shall be authorized to issue capital stock to the extent of Ten thousand dollars ($10,000.00) divided into one hundred (100) shares, of the par value of one hundred dollars each.

The corporation, upon any increase of its capital stock, shall have power to create two or more kinds of stock of such classes, with each designations, preferences and voting powers or restrictions or qualifications thereof and with such provisions as to redemption thereof at not less than par as shall be lawfully prescribed with the assent of the owners of not less than three fourths of the capital stock existing at the time of the increase.

The capital stock with which the corporation will commence business is subscribed by the incorporators as follows:

Name	No. of Shares	Total par Value.
H. Emerson Dean,	5	$500
William Dulles, Jr.,	5	$500
Ezra De Forest,	5	$500
		$1500.

The Post-Office address of each of the incorporators is 60 Grand Street, Jersey City, N. J., the Post-Office address of the registered office of the Company.

(b) This is an appeal by plaintiff from the Orders of the United States District Court for the District of New Jersey made on the 25th day of November, 1941; and 28th day of November, 1941; the third and general Order submitted May 7, 1941, in favor of defendants Carol C. Johnson, William V. Rosenkrans, Nicholas J. Pappas, Helen N. Pappas, and Harry Sussman; Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabe (Charles R. Mabey) and William D. Sutton, and H. Collin Minton, Jr., after several hearings before Hon. Thomas Glynn Walker, and one hearing before Hon. William F. Smith, United States District Judges. In the first place the action is upon the Industrial Act of the State of Utah and is followed by conspiracy.

A civil suit for conspiracy is an action on case (Kamm, Inc. vs. Fling, et als., 175 Atl. 62), R. S. N. J. 2:119-1-2.

A civil conspiracy may be defined as a combination of

two or more persons to accomplish by concerted action an unlawful or oppressive object (National Fireproofing Co. v. Mason Builders Ass'n, 169 F. 259).

I. STATEMENT OF FACTS.

Nicholas J. Curtis, as plaintiff in his own behalf, instituted his suit in the United States District Court, District of New Jersey against the defendants above named, and on the First, Third, Fourth and Fifth Counts laying the damages in the sum of $6,341.11 and threefold that amount in the sum of $19,023.33, against the defendants or in the alternative against the Utah Fuel Company and three of its doctors named above as defendants; and charging the defendant Utah Fuel Company and its said doctors with wilful negligence on their parts in failing to promptly procure medical services, medical care, surgical operation, and hospitalization and/or hospital attention for Dan J. Curtis, an employee of said defendant Utah Fuel Company and brother of this plaintiff; and charging the defendant Utah Fuel Company and its said doctors of having drafted this plaintiff and assigned him or compelled him to use his own home as hospital, spend all the moneys necessary to care for its said patient-employee for or about 40 days, then remove and transport him with his own moneys to Salt Lake City to defendant's general hospital; and charging that after 60 days of malpractice in the home of this plaintiff to, at his own expenses, transport its said employee-patient to St. Mark's Hospital whereat, the defendant company, through its said doctors, charged its said employee-patient with incurable tuberculosis and gave to this plaintiff notice of that fact, having first removed said employee-patient from

its hospital (tubercular cases not allowed to stay in said hospital. See p. 104 of Declaration) and having put him out of it in a porch on the ground floor unsuitable for any person to be confined; and charging the said Dan J. Curtis, as such an employee had paid into a fund created for such purpose a monthly sum of money for such care and attention, and that the defendant company by reason of such contractual relation, and the Industrial Act of the State of Utah, was under duty to furnish such care and attention to him; and that while said Dan J. Curtis was employed and while on duty, he was suddenly taken violently ill, or was injured while so employed on hazardous R. R. Extra Gang work, and that he kept reporting his case to the defendant's doctor at the defendant's local hospital, and was not taken into the hospital, and was not given any medical attention at all, but was sent to the house of this plaintiff with directions—get out of here,—and when taken to said hospital by this plaintiff he was examined by the defendant's doctor and pronounced his case as "coming down with pneumonia" advising that the patient will be operated upon by him in the morning; that no such operation were ever performed by the doctors of the defendant Utah Fuel Company for a period of 40 days; that during said 40 days the defendant's doctor, defendant doctor Murphy, visited the said Dan J. Curtis once a day in the home and under the care of this plaintiff and gave castor oil capsules and other tablets and directed this plaintiff to timely give them to him; that at the end of forty days malpractice this plaintiff asked the defendant's doctors to send Dan J. Curtis to the defendant's general hospital and gave notice to him or them that he was not going to stand their malpractice any longer but that in case they refuse to remove the dying man from his home this plaintiff will use force, legal proceedings, to remove his dying brother

to a hospital, or will remove him at night secretly; and that then and only then the defendant's doctors ordered, directed and assigned the plaintiff to, at his own expenses, remove him from his home at Clear Creek, Utah, to its general hospital at Salt Lake City, Utah, and deliver him to the defendant's doctors there for proper medical attention and surgical operation; and that this plaintiff in the morning he removed his brother, the said Dan J. Curtis, from his then home and in doing so he was assisted to the train and on the train by the defendant's doctor then in charge of the local hospital in person; that at its general hospital its said employee-patient was received by the defendant's doctors and admitted to the defendant's hospital as the defendant's employee-patient and this plaintiff was relieved from any and all further duties to care for his said sick brother; this lasted for or about a week when the said Dan J. Curtis was put out of the hospital as an incurable tubercular and left to die outside the defendant's hospital; these did not agree with the diagnosis of the defendant Dr. E. R. Murphy first given at Clear Creek, Utah, and by reason of his love and sympathy for his natural brother and because Dan J. Curtis was put out of the defendant's hospital without any medical examination and care whatsoever, he had grown much worse by reason of lack of medical attention and care in the hospital; that then and only then and on said date plaintiff went to the Holy Cross Hospital and contracted admission to the same for Dan J. Curtis and in his behalf, and to Dr. Tyndale and his Associates for their services in the case and promised to pay and did pay doctors' consultation, X-Ray examinations, surgical operation, medicines, visits and all necessities necessary to take care of the sickness of the employee of the defendant Utah Fuel Company; the successful results of the hospitalization, medical treatment, care and

operation in the case demonstrated that it was the hospitalization, care, treatment and operation reasonably required to cure and relieve the said Dan J. Curtis from the effects of his sickness or injury, that being so the refusal of the defendant's doctors, after more than 60 days of malpractice, to furnish the dying man the necessary hospitalization, medical and surgical care and operation warranted his removal to a privately operated hospital and placed under the care of private doctors. In the rest of the Counts the plaintiff charges the defendant Utah Fuel Company and its officers and agents for having conspired together and formed a deliberate design and purpose to deprive this plaintiff of his natural rights by and through the formation of a seditious conspiracy continuous and to continue the entire lifetime of the plaintiff and leave a loathsome memory for the hereafter; to do everything necessary to suppress their said theriodies and other crimes suppressed by them; to do and commit every act necessary to carry out their plot so by them formed; to by all means suppress the adminstration of laws and constitutional rights wherever this plaintiff may go; to maliciously prosecute by informations and otherwise and by perjury and subornation of perjury and trial by mob trial and convict this plaintiff for taking his brother from their death bed in front of the municipal bath house at Salt Lake City, Utah, and for filing suit against the defendant, Utah Fuel Company and its co-conspirators; to falsely and maliciously imprison this plaintiff and hold him thus for deportation till they caused him to be deported out of the United States in company of one Christ Zavis, his cousin, and to keep the same in force and operation by all means that money can buy, thereby subjecting this plaintiff to the attacks and insults of all persons having knowledge of their conspiracy or plot; after a period of 24 long years of

malicious and barbaric persecutions they now paid H. Collin Minton, Jr., to go into the United States District Court for the District of New Jersey and move to defeat the ends of justice and the due course of the administration of the laws by said court, in that this plaintiff on the first day of July, 1940, presented to and filed with the Clerk of this Court his application for default judgment against the defendant Utah Fuel Company and Bamberger Coal Company, the Utah Fuel Company owns the entire capital stock and the records show that these corporations are two in name and one in fact, Simon Bamberger was one of its incorporators-owner-President-director and Governor of the State of Utah and Governor of the State Insane Asylum for the Criminal Insane wherein he, Bamberger, want only kept this plaintiff under, barbaric brutalities, starvation, freezing, blows and beatings to force him to submit to life imprisonment therein to suppress the above stated theriodies, therein the said H. Collin Minton, Jr., while the defaults were being pressed against him and others, he moved and stated to the Court that he then say that he represent all those who are not represented by an attorney.

May it please the Court see the Declaration and the Documents of the Record of the pleadings listed on pp. 2-6 (typed record)—in order to cut it short here and save the costs of printing. It has been made a hard struggle for the plaintiff.

Plaintiff was first employed by the Utah Fuel Company in the last part of the year 1907. A short while thereafter he was drafted by the defendant company's Superintendent and General Superintendent and inducted as the defendant's interpreter and directed to take care of all cases of employ, attend all cases of sickness and injuries and assist the company's contract doctor in every case and the

Superintendent in the adjustment of claims of injuries and deaths arising out of or in the course of their employment. Plaintiff was paid the sum of $15.00 per month for his said services. The officials of the defendant, Utah Fuel Co., were working for the company and the injured, sick, and dead had no right to complain. All these grievances have had their recourse on this plaintiff as for his part in the cases. For these reasons plaintiff was compelled to quit the interpreter's job as he was never benefited by it. Accordingly he gave notice to the Officials of the defendant company to the effect that he did not wish to serve the company in that capacity and thereupon he refused to receive his pay statement till the interpreter's pay was taken off. The company superintendent reported the fact to the defendant company and it conducted an inquiry into the case held the same in the main offices at Clear Creek, Utah, and have had with them Mr. Louis Skliris, interpreter general, as investigator. Plaintiff was afraid to give out the true reasons but said that he was not benefited by the job. As a result of this investigation the investigators ordered two months' back pay be added to the plaintiff's statement and be asked to proceed and serve the defendant company. The pay roll clerk added the $30.00 to the statement and asked the plaintiff to kindly sign it and receive it and proceed to help them saying that he wished he had some one to give him $30.00. Plaintiff refused to sign the statement and give notice that he will not sign it at all till the interpreter's pay was taken off. The pay was so taken off and plaintiff refrained from any further activity in that respect up to 1918.

II. JOINDER OF PARTIES DEFENDANT. F. R. 20.

1. Rule 20 of the New Federal Rules of Civil Procedure, 28 U. S. C. A. following section 723 governs the situation. In substance, that provides that joinder of parties defendant is permissible if the claim or claims alleged in an action arise out of a series of transactions or occurrences and there is any question of law or fact common to all of them which will arise in the action. This case does arise out of the same series of occurrences and there are a number of common questions of fact and law in issue. Goddard, D. J. in McNally v. Simons et al., D. C. S. D. N. Y. See pp. 12, 13, and 14. Printed Parts of the Record.

2. Yes, the defendants in the suit were properly joined.

Joint Tort Feasors—May be joint. Brown v. Southern Pacific Co., 31 U. 318, 88 P. 7;

R. S. of Ut. 104-3-13. Id. Defendants. Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein;

Fraud.—Of all parties to fraud. White v. Texas Co., 202 P. 826, 59 U. 180;

Criminal.—All guilty. State v. Morgan, 22 U. 162, 61 P. 527; State v. King, 24 U. 482, 68 P. 418;

Cheating of property.—Statute includes real estate as well as personal property. State v. Blake, 105 P. 910, 36 U. 605;

"Torts".—Actions properly joined which arise out of continuous, official acts. Wilson v. Sullivan, 17 U. 341, 53 P. 14;

Several causes of action arising out of injuries with or without force to person and property of either may be joined. Thomas v. Bythe, 44 U. 1, 137 P. 396;

Continuous tortious acts may be combined to avoid multiplicity of suits. Willson v. Sullivan, 17 U. 341, 53 P. 994;

3. Acts which constitute but a single wrong may be commingled even though, if separately stated, different defenses would apply. Reese v. Qualtrough, 48 U. 23, 156 P. 955. In this case the Supreme Court of the State of Utah says:

There is no reason whatever why the complaint should not be held good. Where facts are commingled in a complaint so that, if they were separated, different defenses would apply, or where a defendant might have a good defense to a certain group of facts constituting a cause of action which he does not have to all the facts as they are commingled in the complaint, the courts do not hesitate to require the plaintiff to separate the facts into separate causes of action so as to permit the defendants to intelligently meet all the matters set forth in the complaint. Where, as in this case, however, the wrongful acts complained of are of such a character, and are so numerous and continuous and so blended together, that in legal effect they constitute but a single wrong or transaction, a segregation will not be required. If, under such circumstances, segregation were required, then the acts of each day would have to be stated separately as constituting separate and independent wrongs and causes of action. Please see the case as reported. See also Joint Wrongs. Cooley on Torts, Vol. 1, Ch. V. p. 223, and cases cited thereunder.

4. Perjury and its subornation have been defined and considered as part and parcel of the same offense. 3 Coke

Institutes 167; 2 Bishop Criminal Laws Secs. 1056, 1197. They were treated as such by the Congress in the Act of April 3, 1790, Ch. 9, Sec. 18, 1 Stat. 116. Their separation into two cognate sections in subsequent revisions of this original statute, 18 U. S. C. A. Secs. 231, 232, hardly import a difference in substance. Any general distinction between perpetration and procurement (. . .) no longer obtains. 18 U. S. C. A. Sec. 550. Clark, C. J. in Re United States v. Silverman, C. C. A. Third Circuit, Sept. 7, 1939. 106 F. 2d. 75.

See also the following cases and cases in point:

Ruthenberg v. United States, 245 U. S. 480, 483, 38 S. Ct. 168, 62 L. Ed. 414;

United States v. Bakes, C. C. A. 7th C. 107 F. 2d. 579, (6);

Pon Wing Quong v. U. S., C. C. A. 9th C., April, 1940, 111 F. 2d. 257;

Backun v. United States, C. C. A. 4th C., June 10, 1940, 112 F. 2d. 635;

United Cigar Whelan Stores Corp. et al. v. United States, 113 F. 2d. 340;

United States v. Hodorowicz, C. C. A. 7th C. 105 F. 2d. 218 (7);

Page v. United States, C. C. A. 5th C., 94 F. 2d. 591, (4);

Robinson et al. v. United States, 94 F. 2d. 752, (2), (3), (4);

Schrader v. United States, C. C. A. 8th C., 94 F. 2d. 926 (1);

Alexander v. United States and 3 others, C. C. A. 8th C., 95 F. 2d. 875;

Ginsberg v. United States, C. C. A. 5th C., 96 F. 2d. 433, (13);

What is done and said by co-conspirators in execution of their enterprise is admissible against all. Cr. Code Sec. 332, 18 U. S. C. A. Sec. 550;

Young v. United States, C. C. A. 5th C. 97 F. 2d 200, (1);
Touhy v. United States, C. C. A. 8th C., 88 F. 2d. 930, (16);
Marino et al. v. United States, C. C. A. 9th C., 91 F. 2d. 691.

A Leading Authority under 18 U. S. C. A. 88. See Par's 1 to 31 inclusive and Notes thereunder;
Sutton v. United States, 79 F. 2d. 863;
Wainer et al. v. United States, C. C. A. 7th C., 82 F. 2d. 305.

5. 18 U. S. C. A. Sec. 550. Citation thereon.
Grabboyes v. United States (C. C. A. 3rd C.), 250 Fed. 793;
Nobile v. United States (C. C. A. 3rd C.), 284 Fed. 253;
Marcus v. United States (C. C. A. 3rd C.), 20 Fed. (2d) 454 Cer.
Den. 275 U. S. 565, 72 L. Ed. 429, 48 S. C. R. 122;
Rizzo v. United States (C. C. A. 3rd C.), 275 Fed. 51 (U. S. D. C. N. J. 1918);
"District in which defendant is found". Venner v. Pennsylvania Steel Co. of New Jersey, 250 F. 292.
United States v. Campbell (D. C. Pa. 1910) 179 F. 762;
Gretsch v. United States (N. J. 1917) 242 F. 897, 155 C. C. A. 485, Cer. Den. 38 S. Ct. 12, 245 U. S. 654, 62 L. Ed. 532;
United States v. Jordan (D. C. Pa. 1927), 22 F. (2d) 702, (5) pp. 706-707.

III. JURISDICTION OF SUBJECT MATTER AND OF PARTIES.

"The jurisdiction in civil and criminal matters conferred on the district Courts by the provisions of chapter

3 of Title 8, and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; . . . " Section 729 of Title 28, U. S. C. A. (R. S. Sec. 722). (Pp. 8-9 of printed parts of Record.)

1. Definitions. "In conformity with the Laws of the United States". Words and Phrases, Permanent Edition, Vol. 8, 582, 583, 584.

2. A certificate by a judge that he has discharged a certain duty in "conformity" with the law means that the duty was done "according to the spirit and intent" of the law. Citing: Friend v. Hamill, 34 Md. 298, 303.

3. "In pursuance of", or "in conformity with", or "by virtue of", or "by authority of" the statute, have been held, ... , to import full compliance with the statute. Mr. Justice Harlan in Re School District v. Stone, ... ; See also Bates v. Independent School Dist., 25 F. 192, 195.

4. United States Code Annotated 1941. Cumulative Annual Pocket Part. Laws and Amendments to Nov. 4, 1941. For use during 1942. Title 1, Section 54 (a). Codes and supplements as establishing prima facie the Law. The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included.

5. Revised Statutes and Supplements as Evidence of the Law. Act of June 20, 1874, c. 333, Sec. 2, 18 Stat. 113 provided that the Revised Statutes of the United States in the printed volumes should be legal evidence of the Laws and treaties therein contained, in all the courts of the United States and of the several States and Territories. See also: Act of Mar. 2, 1871, c. 26, 20 Stat. 27; Acts of June 7, 1880, No. 44, 21 Stat. 308; April 9, 1890, c. 73, Sec. 3, 26 Stat. 50.

6. "It is manifest that to constitute a criminal offense under this section (5440), (Read in Sections cited in XII hereunder) the object of the conspiracy must be to commit some offense against the United States; that is, to do some act made a crime by the laws of the United States, . . . on p. 79. And if an act is against the law, it is against the United States, and if against the United States, it is because it is against the laws, and by "laws" is meant "statutory laws."

Parker, District Judge in re Walf (D. C.) 27 Fed. 606-611.

7. (36 C. J.) Law. p. 959. (Sec. 2) B. (Sec. 5.) Federal Law. Law administered in federal Courts. Morris-Turner Live Stock Co. v. Director Gen. of Railroads, 266 Fed. 600, 601. See Fed. Cts. 25 C. J. p. 679.

8. Title 28 U. S. C. A. Section 41, subd. (1) last sentence. The foregoing provisions as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of the section. R. S. 563; Mar. 3, 1875, Sec. 1, 25 Stat. 433; Mar. 3, 1911, c. 231, Sec. 24, 36 Stat. 1091.

9. Subd. (2). Crimes and offenses. Second. Of all crimes and offenses cognizable under the authority of the United

States. (R. S. 563 pars. 1, 2, Sec. 629, pars. 19, 20; Mar. 3, 1875, c. 137, Sec. 1, 18 Stat. 470; Mar. 3, 1887, c. 373, Sec. 1, 24 Stat. 552; Aug. 13, 1888, c. 866, Sec. 1, 25 Stat. 433; Mar. 3, 1911, C. 231, Sec. 24, par. 2, 36 Stat. 1091. See also Encyclopedia of United States Supreme Court Reports, Vol. 3, pp. 821-822. Civil Rights. R. Civil Actions. Note 28. Civil Jurisdiction of federal courts. Holt v. Indiana Mfg. Co., 176 U. S. 68, 72, 44 L. Ed. 374; Carter v. Greenhow, 144 U. S. 317, 29 L. Ed. 202; Pleasants v. Greenhow, 114 U. S. 323, 29 L. Ed. 204; Civil rights cases, 109 U. S. 3, 12, 27 L. Ed. 835.

10. 28 U. S. C. A. Section 41, subd. (12). Suits Concerning Civil Rights. Twelfth. Of all suits authorized by law to be brought by any person for the recovery of damages on account of any injury to his person or property, or of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 47 of Tit. 8. (R. S. 563, par. 11, Sec. 629, par. 17; Mar. 3, 1911, C. 231, Sec. 24, par. 12, 63 Stat. 1092.)

11. 28 U. S. C. A. Sec. 41, subd. (14). Suits to redress deprivation of civil rights. Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any state, of any right, privilege or immunity, secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States. (R. S. 563, par. 12, Sec. 629, par. 16; Mar. 3, 1911, c. 231, Sec. 24, par. 14, 36 Stat. 1092.)

Historical Note. This paragraph merges the jurisdiction which had been vested in the District Court by par. 12 of R. S. 563; . . . "The sum or value of the matter in controversy" is immaterial. See last sentence of subd. (1) of this section.

12. 28 U. S. C. A. Section 41, subd. (17). Suits by Aliens for Torts. Seventeenth. Of all suits brought by any alien for a tort only, in violation of the laws of Nations or of a treaty of the United States. (R. S. Sec. 563, par. 16; Mar. 3, 1911, c. 231, Sec. 24, par. 17, 36 Stat. 1093.) "The sum or value of the matter in controversy" is immaterial. See last sentence of subd. (1) of this section.

Definitions. International Law Digest. Wharton. Washington, Government Printing Office. Vol. 1, Ch. IX.

a. Law of Nations Part of Law of Land. The laws of the United States ought not, if it be avoidable, so to be construed as to infract the common principles and usages of nations, or the general doctrines of international law. Talbot v. Seaman, 1 Cranch 1. Even as to a municipal matter the lex fori should be so construed as to conform to the law of nations unless the contrary be expressly prescribed. The Amalia 1 Cranch 1; 4 Dall. 34; Murray v. The Charming Betsy, 2 Cranch 170.

b. An act of Congress ought never to be construed to violate the law of nations if any other possible construction remains, nor should it be construed to violate neutral rights or to affect neutral commerce further than is warranted by the law of nations, as understood in this country. Murray v. The Charming Betsy, 2 Cranch 118.

c. The law of nations is part of the municipal law of Pennsylvania. Rest. v. De Long Champs, 1 Dall., 111.

d. The law of nations should be respected by the federal courts as a part of the law of the land. The Nereide, 9 Cranch. 388.

e. "The law of nations makes an integral part * * * of the laws of the land." Mr. Jefferson, Sec. of State, to Mr. Genet, June 5, 1793, MMS. Notes. For. Leg. Wait's Amm. St. Pap., 30. 1 Am. Pap. F. R. 150.

f. The law of nations is considered as a part of the municipal law of each state. 5 Op. (Appendix), 691, Lincoln, 1802.

g. International law is founded upon natural reason and justice, the opinions of "writers of known wisdom, and the practice of civilized nations". 9 Op. 350. Black, 1859.

13. 28 U. S. C. A. Sec. 41, subd. (23). Suits against trusts, monopolies, and unlawful combinations. Twenty-third. Of all suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies. (Mar. 3, 1911, C. 231, Sec. 24, par. 23, 36 Stat. 1093). Historical Note. "The sum or value of the matter in controversy" is immaterial. See last sentence of subd. (1) of this section.

14. A conspiracy to corruptly obstruct and impede the due administration of justice in a court of the United States in a civil action between private parties in violation of R. S. Sec. 5399 (embodied in Section 241 of Tit. 18) is a conspiracy to commit an offense against the United States within the meaning of R. S. Sec. 5450. Wilder v. United States, 143 F. 433, 74 C. C. A. 567, Writ of Certiorari denied 27 S. Ct. 787, 204 U. S. 674, 51 L. Ed. 674. (See the

several sections of Title 18 and Notes thereunder in the Appendix of this Brief, pp. 3a to 16a, inclusive).

15. Jurisdiction of the United States District Court, District of New Jersey of the case at Bar.

An Action authorized by sections 43 and 47 of Title 8, U. S. C. A. is within federal Court's jurisdiction as based on United States Laws. Mitchell v. Greenough, 100 F. 2nd 184, rehearing denied, 1939, 100 F. 2nd. 1006, and certiorari denied, 1939, 59 S. Ct. 788, 306 U. S. 659, 83 L. Ed. 1056. (28 U. S. C. A. Sec. 41, subd. (2)).

16. A conspiracy is a partnership in crime, and an overt act of one partner may be the act of all without any new agreement specifically directed to that act. United States v. Socony Vacuum Oil Co. 60 S. Ct. 811, 310 U. S. 150, 84 L. Ed. (18 U. S. C. A. 550.)

If an agreement has an unlawful purpose, it is a conspiracy.

Lynch v. Magnavox Co., 94 F. 2nd. 883. (R. S. of New Jersey. Ch. 119. Conspiracy. 2:119-1).

Any two or more persons who shall combine, unite, confederate, conspire or bind themselves by oath, covenant, agreement, or other alliance:

a. To commit a crime; or

b. Falsely and maliciously to indict another for a crime, or to procure another to be charged or arrested for a crime; or

c. Falsely to institute and maintain any suit; or

d. To cheat and defraud a person of any property by any means which are in themselves criminal; or

e. To cheat and defraud a person of any property by any means which if executed, would amount to a cheat; or

f. To obtain money by false pretenses; g . . .

h. To commit any act for the perversion or obstruction of justice or the due administration of the laws—

Shall be guilty of conspiracy and be liable to the same penalty as persons convicted of a misdemeanor; R. S. of Utah, Ch. 11. Criminal Conspiracy defined. (See pp. 92, 93 of printed Declaration.) (28 U. S. C. A. 725.)

17. Jurisdiction of the Court below to prevent an absolute failure of justice.

When a crime is committed partly in one district and partly in another, it must, in order to prevent an absolute failure of justice, be tried in the district, or in that one which the legislature may designate; and Congress has accordingly provided that when any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either district, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein. (R. S. Sec. 731; Mar. 1, 1911, c. 231, Sec. 42; Encyclopedia of United States Supreme Court Reports, Venue, Vol. 11, p. 916; Putnam vs. United States, 143 U. S. 207, 40 L. Ed. 1118; Horner vs. United States, 143 U. S. 207, 214, 36 L. Ed. 126; Benson vs. Henkel, 198 U. S. 1, 49 L. Ed. 919; Hyde vs. Shine, 199 U. S. 62, 76 et seq., 25 S. Ct. 760, 5 L. Ed. 90; Armour Packing Co. vs. United States, 209 U. S. 56; Brown vs. Elliott, p. ....; United States vs. Kissel, 218 U. S. 601. (28 U. S. C. A. 103.)

a. Definitions. The words "offenses against United States" in this said section (103) have the same meaning as the words "offenses against the laws of the United States" in the original Act of March 2, 1867, 14 Stat. 484, c. 169.

b. The words "any offense against the United States" in the section (28 U. S. C. A. 103) have been construed to include any offense made a crime by the laws of the United States. Radin vs. United States, 189 Fed. 568, 111 C. C. A. 6; United States vs. Kissell, 31 S. Ct. 124, 218 U. S. 606, 54 L. Ed. 118.

c. Webster's New Inter. Dictionary. Deal. p. 675. 10. deal with or by: To handle or treat so as to dispose of or manage adequately; as, to deal with a problem. (17 C. J.) p. 1157. Dealt with: Where a consequence follows on an alleged offense being "dealt with", by a competent tribunal; that provision does not only apply when there has been a conviction, it equally applies if the charge is dismissed. Stroud Jud. D. (ct. Exp. Brown, 37 Sol. J. 27.)

d. The language of the Statute is, "shall be deemed to have been committed in either", which means must be deemed, etc. Such is the meaning of the word "shall" given in the following cases by the following authorities:

e. Mr. Justice Waite, in re Ex Parte Jordan, 94 U. S. 248, 24:123. The Court says: The language of the statute is, "shall be allowed," which means "must be allowed" when asked by one who stands in such relation to the cause that he can demand it. And in 25 R. C. L. Statutes, Sec. 15, pp. 768-769. "Shall" ought, undoubtedly to be construed as meaning "must" for the purpose of sustaining

or enforcing an existing right, (West Wisconsin Co. v. Foley, 94 U. S. 160, 24 L. ed. 71) or where a public body is directed to do certain acts. Newton v. Jasper County, 135 Ia. 27, 112 N. W. 167, 124 A. S. R. 256 and Note.

f. Thus, the words "may," "shall be lawful," and the like, frequently are to be construed as "shall" or "must" where the right of the public or of third persons depend on the exercise of the power, or the performance of the duty to which the statute refers. Sec. 15 R. C. L. supra. (U. S. v. Thman, 156 U. S. 353, 15 S. Ct. 378, 39 U. S. L. ed. 450; Ex parte Simonton, 9 Port. (Ala) 390, 33 Am. Dec. 320; Slackpole v. Hallahan, 16 Mont. 40, 40 Pac. 80, 28 L. R. A. 502; Kennelly v. Jersey City, 57 N. J. L. 293, 30 Atl. 531, 26 L. R. A. 281; People v. Brooks, 1 Denio (N. Y. 457, 43 Am. Dec. 704; State v. Kent, 4 N. D. 577, 62 N. W. 631, 27 L. R. A. 686. Notes 6 L. R. A. 162; 12 L. R. A. 355, 356, See Mandamus, Vol. 18, p. 119.

g. "May be dealt with" means must be dealt with. Authorities just above.

h. Thus, in Rex & Regina v. Barlow, 2 Salt. 609.—Where a statute directs the doing of a thing for the sake of justice or the public good, the word "may" is the same as the word "shall," thus, 23 Hen. 8 says the Sheriff may take bail; this is construed he shall, for he is compellable so to do. Mr. Justice Woodbury, in re: Mason et al v. Fearson, 9 How. on p. 258. Citing: Carthew, 293. On this see further, The King v. The Inhabitants of Derby, Skinn, 370; Backwell's case, 1 Vern. 152, 154; 2 Chit. 251; Dwarr Stat. 712; Newburgh T. Co. v. Miller, 5 Johns (N. Y.) Ch. 113; City of New York v. Furze, 3 Hill (N. Y.) 612, 614; Minor et al v. The Mechanics' Bank, 1 Pet. 64. "May" means "must" in all cases where the legislature means to

impose a positive duty. See also State Ex. rel. Greaves v. Henry, Mississippi Sup. Court 5 L. R. A. (N. S.) 340 and Notes 340-341.

Where a word has a judicially settled meaning, it will be presumed that Congress, in using that word in an Act used it in that sense. U. S. v. Merriam, 44 S. Ct. 69, 263 U. S. 179, 68 L. Ed. 240, 29 A. L. R. 1547.

As to the judicially settled meaning of the law found in Section 103 of Title 28, U. S. C. A., See:

Continental Illinois Nat. Bank & T. Co. v. Chicago, etc. Co., 55 S. Ct. 23, 293 U. S. 58, 79 L. Ed. 197;

Wilder vs. United States, 27 Sup. Ct. 787, 204 U. S. 674, 51 L. Ed. 674;

Mitchel v. Greenough, 59 S. Ct. 788, 306 U. S. 659, 83 L. Ed. 1056;

U. S. v. Kissel, 31 Sup. Ct. 124, 126, 218 U. S. 606, 54 L. Ed. 1168;

In re: Palliser, 136 U. S. 257, 262, 10 Sup. Ct. 1034, 34 L. Ed. 514;

Horner v. U. S., 143 U. S. 207, 12 Sup. Ct. 407, 36 L. Ed. 126;

Burton v. U. S. 202 U. S. 344, 381 et seq., 26 Sup. Ct. 688, 50 L. Ed. 1057;

Hyde v. U. S. 225 U. S. 347 et seq.;

Lamar v. U. S. 240 U. S. 60, 36 Sup. Ct. 255, 60 L. Ed. 526;

United States v. Fullheart, quoting from Re Subold, 100 U. S. 871, on p. 895;

Hyde v. Shine, 199 U. S. 62, 25 S. Ct. 760, 5 L. Ed. 90;

Haas v. Henkle, 216 U. S. 462, 30 S. Ct. 249, 54 L. Ed. 569, 17 Ann. cas. 1112;

Grayson v. United States, 272 F. 553;

Grigg v. Bolton, 53 F. (2d) 158;

United States v. Freeman, 239 U. S. 117, 36 S. Ct. 30, 60 L. Ed. 172;

United States v. Alaska Cons. Canneries, 2 F. (2d) 614;
Putnam v. United States, 162 U. S. 687, 708, 16 Sup. Ct. 923, 40 L. Ed. 1118;
Benson v. Henkel, 198 U. S. 1, 25 S. Ct. 569, 49 L. Ed. 219;
United States v. Lombardo, 241 U. S. 73, 77, 36 S. Ct. 508, 510, 60 L. Ed. 597.
There is no exception to be found in the reported cases.

i. A New English Dictionary on Historical Principles, Vol. D. & E. p. 67. 16. To deal with; to act in regard to, administer, handle, dispose in any way of (a thing); b: to handle effectively; to grapple with; to take successful action in regard to.

j. (17 C. J.) p. 1153. Deal as a verb. Citing Wilson v. Delaney, 137 Iowa 636, 638; 113 N. W. 843; on p. 1154—to have to do with. 61. Citing: Montgomery Branch Bank v. Knox, 1 Ala. 148, 151; 11 A. L. R. P. 662, cases quoted in the page.

18. Jurisdiction on constructive presence.

a. There may be a constructive presence in a State, distinct from personal presence, by which a crime committed in another state may be consummated, and render the person consummating it punishable at that place. Hyde vs. United States, 225 U. S. 347; State v. Rodosta, 138 So. 124, 126, 173 La. 623; It may be a constructive presence. Mitchell vs. Commonwealth, 33 Grat. 845, 868; Griminger vs. State, 60 S. W. 583, 87, 44 Tex. Cr. R. 1; State v. Town (Ohio) Wright, 75.

b. It is settled that there may be a constructive presence in a State, distinct from a personal presence, by which a

crime committed in another state "may be consummated and so be punishable there." Grayson vs. United States 272 F. on p. 557 (8); Citing: In re Palliser 136 U. S. 257, 267, 10 S. Ct. 1034, 34 L. Ed. 514; Horner vs. United States, 143 U. S. 207, 12 Sup. Ct. 407, 36 L. Ed. 126; Burton vs. United States, 202 U. S. 344, 381, et seq., 26 S. Ct. 688, 50 L. Ed. 1057, 6 Ann. Cas. 392; Hyde vs. United States, 225 U. S. 347; Lamar vs. United States, 240 U. S. 60, 36 Sup. Ct. 255, 60 L. Ed. 526.

c. By this Court in re: Calahan v. United States, C. C. A. 3rd C. 53 f. (2d) 467. Before Davis, Circuit Court Justice, Clark and Avis, District Court Judges of the Court below.

Avis, District Judge delivered the Opinion of the Court and in part says:

(3) It is claimed that the defendant appellant was not in the district of Delaware at the time the offense was committed, and that, by reason of his being out of the district, he could not be found guilty of the offense charged. The law is quite clear that a person may be convicted of aiding, abetting, and inciting the commission of an offense, even though he may not be in the district when the offense is actually committed, if the court has jurisdiction of the defendant at the time of trial.

This principle is recognized by Congress in section 42 of the Judicial Code (28 U. S. C. A. Sec. 103), as it refers to jurisdiction between the various district courts, and is upheld and applied in the Sup. Court case of Ford v. United States, 273 U. S. 593, 620, 47 S. Ct. 531, 71 L. Ed. 793.

See also Cretsch v. United States, C. C. A. 3rd C. No. 2240, 242 Fed. 897, note 4, p. 899.

As the act in question was done in New Jersey, this was sufficient to give the District Court jurisdiction.

d. The question has been judicially settled by the United States Supreme Court in re: United States vs. Trenton Potteries Co., 273 U. S. 392, 47 S. Ct. 377, 71 L. Ed. 700, 5 A. L. R. 939—Crim. L. 113, 448 (1), 451 (2), 829 (1), 984, 448, 1038 (3), 1168 (1), 1170½ (2).

Mr. Justice Stone delivered the Opinion of the Court and says: (7) "The secretary testified that acting for the association, he effected sales within the district. All of these were overt acts sufficient for jurisdictional requirements."

(e) The question has been also settled by this Court and it is the law of this Court in all cases in point. Vacuum Oil Co. v. Eagle Oil Co., 867, decree affirmed. Eagle Oil Co. of New York v. Vacuum Oil Co., 162 F. 671, 89 C. C. A. 463, certiorari denied, 29 S. Ct. 696, 214 U. 515, 53 L. Ed. 1063. On page 875 of 154 Fed. Rep. this Court says:

> "But while the action is founded upon fraud, it is also of transitory character, and the fact that some of the fraudulent acts were committed outside the jurisdiction of this court and outside of the United States will not avail the defendants. McKenna v. Fisk, 1 How. 241, 247, 248, 11 L. Ed. 117. Mitchel v. Harmony, 13 How. 115, 137, 14 L. Ed. 75; Dennick v. Central R. R. Co., 103 U. S. 11, 18, 26 L. Ed. 43".

19. THE DISTRICT COURT'S JURISDICTION. CLAYTON AND SHERMAN ACTS.

a. Definitions. Transacting Business.—Clayton Anti-Trust Act, Oct. 15, 1914, construed with respect to the dis-

tricts in which suits against corporations for its violation may be brought. Frey & Son v. Cudahy Packing Co., 228 Fed. 209; American Co-operative Serum Ass'n v. Anchor Serum Co., et al. (1941), 38 F. Supp. 313; United States v. Univis Lens Co., Inc., et al., 37 F. Supp. 459; Hansen Packing Co. v. Swift & Co. et al., 27 F. Supp. 364 (8).

The meaning of the phrase "to carry on" when applied to business, is well settled. In Webster's Dictionary the definition is "to prosecute; to help forward; to continue; as to carry on business, etc." Florsheim Bros. Dry Goods Co. v. Lester, 29 S. W. 34, 35, 60 Ark. 120, 27 L. R. A. 505, 46 Am. St. Rep. 162 (citing) Cooper Mfg. Co. v. Ferguson, 113 U. S. 727, 5 Sup. Ct. 739, 28 L. Ed. 1137.

b. Law. CONSTRUCTION OF.

In suits under section 7 of the Sherman Anti Trust Act (15 U. S. C. A. Sec. 15, note), the word "found" came to mean "doing a business" to a substantial extent. Knox, J., in re Hansen Packing Co. v. Armour & Company, 16 F. Supp. 784. Citing: Peoples Tobacco Co. v. American Tobacco Company, 246 U. S. 79, 87, 38 S. Ct. 233, 62 L. Ed. 597, Ann. Cas. 1918C, 537; Katz Drug Co. v. Shaeffer Penn Company, 6 F. Supp. 210.

c. Section 22 of Title 15, U. S. C. A. is a venue statute which enables a complainant to file his suit in any district wherein the defendant resides, or found or where it "transacts business". Upon the theory that the defendant Utah Fuel Company is a citizen and resident of the State of New Jersey, residing at the city of Jersey City, New Jersey where it was found or where it transacts its business, or from wherein it transacts its business throughout the United States, the suit was filed here.

Under such circumstances the venue would be fixed here. Jeffery-Nichols Motor Co. v. Hupp Motor Corp., 46 F. (2nd) 623; Eastman Kodak Co. v. Southern Photo Materials Co., 273 U. S. 359, 47 S. Ct. 400, 71 L. Ed. 684.

d. (4) (From the Katz Drug Co. cas. supra.) Said statute, however, provides that all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found. In this case it is unquestionable that the Utah Fuel Company is an inhabitant of the State of New Jersey and it is found there transacting its business throughout the United States. It is also unquestionable that it is found, it is transacting its business, and it has been and is operating the conspiracy in question in the State of Utah, as well as in several other states of the United States. (28 U. S. C. A. Secs. 103, 725; 15 U. S. C. A. Secs. 1, 2, 3; 18 U. S. C. A. Secs. 52, 54, 88, 231, 232 et seq. See the sections in the appendix pp. 3a et seq.; Clark, C. J., II, 4 supra; Avis, D. J., re Calahan vs. United States, II, 18, c.)

e. Facts. The defendant Utah Fuel Company is a powerful corporation and owns entire capital stock of (a) Calumet Fuel Co.; (b) Wasatch Store Co.; (c) Castle Gate Coal, Coke & Fuel Co.; (d) Bamberger Coal Co., and (e) Utah Grazing Lands Co.; stock owned jointly by Western Pacific R. R. Co. and Missouri Pacific R. R. Co. The Rio Grande Western (D. & R. G. R. R. Co.) was the operator; occupied the same offices; had the same paymaster; employed the same section gangs and deducted from every Greek employed by the Railroad Cos. $1.00 every month "to have and to hold" the job. Thus the spoils taken in provide the resources with which they do away with complainants.

f. LAW. CIVIL RIGHTS ACTS CONSTRUED. C. C. A. 3rd. C.

As we have seen, the suit involves the deprivation of civil rights. R. S. Secs. 1979 and 1980, 8 U. S. C. A. Secs. 43, 47, give to the individuals thus deprived a right of action at law. Irrespective of these statutes, however, a right of action in the individual for damages for loss of political rights existed at common law. Nixon v. Herndon, 273 U. S. 536, 47 S. Ct. 446, 71 L. Ed. 759. Such an action sounds in tort and the jury may award exemplary or punitive damages. Barry v. Admonds, 116 U. S. 550, 6 S. Ct. 501, 29 L. Ed. 729; Wiley v. Sinkler, 179 U. S. 58, 21 S. Ct. 17, 45 L. Ed. 84. In such an action the jurisdictional sum is to be determined by the amount claimed by the plaintiff in his complaint or declaration, Hulsecamp v. Teel, Fed. Case, No. 6862, 2 Dall. 358, 1 L. Ed. 414; Wiley v. Sinkler, Supra, including an amount claimed by way of punitive damages. Ragsdelle v. Rudich, 5 Cir., 293 F. 182, unless it appears from the complaint or declaration that it is not possible for the plaintiff to recover the amount claimed or that the amount is claimed fraudulently in order to create jurisdiction in the court. Smithers v. Smith, 204 U. S. 632, 27 S. Ct. 297, 51 L. Ed. 656. BIGGS, C. J. RE: HAGUE V. COMMITTEE OF INDUSTRIAL ORGANIZATION. 101 F. 2nd, 774. (Ruling on Motions Nos. 1 and 3.)

8. LAW. CIVIL RIGHTS ACTS CONSTRUED. UNITED STATES SUPREME COURT.

HAGUE V. COMMITTEE OF INDUSTRIAL ORGANIZATION, 307 U. S. on p. 968.

Same case (f) supra, on writ of Certiorari. 307 U. S. 495, et seq. 83 L. Ed. 1532. Mr. Justice Roberts delivered an opinion in which Mr. Justice Black concurred:

(27) The Supreme Court says: The right to maintain the present suit is conferred upon the individual respondents by the due process clause and Acts of Congress, regardless of their citizenship and of the amount in controversy. Section 1 of the Civil Rights Act of April 20, 1871, 17 Stat. 13, provided, that "any person who, under color of any law, statute, ordinance * * * of any state, shall subject, or cause to be subjected, any person within the jurisdiction of the United States to the deprivation of any rights, privileges or immunities secured by the Constitution of the United States, shall * * * be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress". And it directed that such proceedings should be prosecuted in the several district or circuit courts of the United States. The right of action given by this section was later specifically limited to "any citizen of the United States or other person within the jurisdiction thereof," and was

526

extended to include rights, privileges and immunities secured by the laws of the United States as well as by the Constitution. As thus modified the provision was continued as sect. 1979 of the Revised Statute and now constitutes sec. 43 of Title 8 of the United States Code, 8 U. S. C. A. Sec. 43.

It will be observed that the cause of action, given by the section in its original as well as its final form, stands broadly to deprivation by state action of the rights, privileges and immunities secured to persons by the Constitution. It thus includes the Fourteenth Amendment and such privileges and immunities as are secured by the due process and equal protection clauses, as well as by the privileges and immunities clause of that Amendment. It will also be observed that they are those rights secured to

persons, whether citizens of the United States or not, to whom the Amendment in terms extends the benefit of the due process and equal protection clause.

Meanwhile, the provisions conferring jurisdiction on district and circuit courts over suits brought under sec. 1 of Civil Rights Act of 1871 were continued as Rev. Statute Secs. 568 and 629, and now appear as Sec. 24 (14) of the Judicial Code, 28 U. S. C. A. Sec. 41 (14). The Act of March 3, 1911, 36 Stat. at L. 1087, 1091 amended Sec. 24 (1) of the Judicial Code so as to direct that "The foregoing provision as to the sum or value of the matter in controversy shall not be construed to apply to any of the cases mentioned in the succeeding paragraphs of the section." Thus, *(529) *since 1875, the jurisdictional acts have contained two parallel provisions, one conferring jurisdiction on the federal courts, district or circuit, to entertain suits "arising under the constitution or laws of the United States" in which the amount in controversy exceeds a specified value; the other, now Sec. 24 (14) of the Judicial Code, conferring jurisdiction on those courts of suits authorized by the Civil Rights Act of 1871, regardless of the amount in controversy.

Since all of the suits authorized are suits arising under a statute of the United States to redress deprivation of rights, privileges and immunities secured by the Constitution, all are literally suits "arising under the Constitution or the laws of the United States". But it does not follow that in every such suit the plaintiff is required by Sec. 24 (1) of the Judicial Code to allege and prove that the constitutional immunity which he seeks to vindicate has a value in excess of $3,000. There are many rights and immunities secured by the Constitution, of which freedom of speech and assembly are conspicuous examples, which are not capable of money valuation, and in many

instances, like the present, no suit in equity could be maintained for their protection if proof of the jurisdictional amount were prerequisite. We can hardly suppose that Congress, having in the broad terms of the Civil Rights Act of 1871 vested in all persons within the jurisdiction of the United States a right of action in equity for the deprivation of constitutional immunities cognizable only in the federal courts, intended by the act of 1875 to destroy those rights of action by withholding from the courts of the United States jurisdiction to entertain them.

That such was not the purpose of the Act of 1875 in extending the jurisdiction of the federal courts to causes of action arising under the Constitution or laws of the United States involving a specified jurisdictional amount, is evident from the continuance upon the statute books of *Sec. 24 (14) side by side with 24 (1) of the Judicial Code, as amended by the Act of 1875. Since the two provisions stand and must be read together, it is obvious that neither is to be interpreted as abolishing the other, especially when it is remembered that the 1911 amendment of section 24 (1) provided that the requirement of a jurisdictional amount should not be construed to apply to cases mentioned in Sec. 24 (14). Thus must be taken as legislative recognition that there are suits authorized by sec. 1 of the Act of 1871 which could be brought under Sec. 24 (4) after, as well as before, the amendment of 1875 without compliance with any requirement of jurisdictional amount, and that these at least must be deemed to include suits in which the subject matter is one incapable of valuation. Otherwise we should be forced to reach the absurd conclusion that Sec. 24 (14) is meaningless and that a large proportion of the suits authorized by the Civil Rights Act cannot be maintained in any court, although jurisdiction of them, with no requirement of jurisdictional amount, was

carefully preserved by Sec. 24 (14) of the Judicial Code and by the 1911 amendment of Sec. 24 (1). By treating Sec. 24 (14) as conferring federal jurisdiction of suits brought under the Act of 1871 in which the right asserted is inherently incapable of pecuniary valuation, we harmonize the two parallel provisions of the judicial code, construe neither as superfluous, and give to each a scope in conformity with its history and manifest purpose. The practical construction which has been given to the two jurisdictional provisions established that the jurisdiction conferred by Sec. 24 (14) has been preserved to the extent indicated.

The conclusion seems inescapable that the right conferred by the Act of 1871 to maintain a suit in equity in the federal Courts to protect the suitor against a deprivation of rights or immunities secured by the Constitution, has been preserved, and that whenever the right or immunity is one of personal liberty, not dependent for its existence upon the infringement of property rights there *is jurisdiction in the district court under Sec. 24 (14) of the Judicial Code to entertain it without proof that the amount in controversy exceeds $3,000. As the right is secured to "any person" by the due process clause, and as the statute permits the suit to be brought by "any person" as well as by a citizen, it is certain that resort to the privileges and immunities clause would not support the decree which we now sustain. . . . (Re: Ruling on Motions Nos. 1 and 3.)

Plaintiff's Note. The Decision construing the subd. (14) of Sec. 41 of Title 28 U. S. C. A. applies to and governs subds. (2), (12), (17), and (23) of said Title and Section. (See pars. 8, 9, 10, 11, 12, 13 of III supra.) (RULINGS ON MOTIONS 1, 2, 3, 4, AS TO DEFENDANT MINTON, ARE NULL AND VOID.)

IV. CRIMINAL LAWS OF UNITED STATES APPLY TO ALL CONSPIRACIES THAT AFFECT PRIVATE RIGHTS. (18 U. S. C. A., 52 et. seq. See Appendix.)

The offenses denounced by the Criminal Statutes of the United States are not confined to such acts as injure the United States, but apply as well to all conspiracies that affect private rights or interests where they are under the protection of the criminal laws of the United States, as to the right and interests of the government itself. ('Cyc.) p. 628, 5; U. S. v. Sanch, 7 Fed. 715. See also Notes under Section 88 U. S. C. A. 18 in the Appendix. (Motions Nos. 1, 2, 3, 4.) (Motion No. 4 as to Dfnt. H. Collin Minton, Jr.)

V. THE FEDERAL COURTS CANNOT ABANDON THEIR JURISDICTION PROPERLY OBTAINED OF A SUIT.

The Federal Courts cannot abandon their jurisdiction already properly obtained of a suit. The Courts of the United States are bound to proceed to judgment and to afford redress to suitors before them in every case to which their jurisdiction extends. Snydam v. Broadnax, 14 Pet. 67; Union Bank v. Jolly's Administrators, 18 How. 503. Where a case is made upon a bill which is within the jurisdiction of the Court of the United States the court is bound to maintain such action and proceed to trial. The law should and ought to be enforced as against all.

The existence of the Jurisdiction creates an implication of duty to exercise it. That the judges of the United States shall be bound by the Constitution of the United States

and the Acts of Congress of the United States and the Judicial Authority shall be exercised pursuant to the provision of the Constitution of the United States, the Acts of Congress of the United States and the Common Law. United States Supreme Court re McCleland v. Garland, 217 U. S. 268.

VI. LAWS OF STATES AS RULES OF DECISIONS. (R. S. of Utah, 1933.)

Title 42. Industrial Commission. Workmen's Compensation.

See and read in pp. 44, 45, 46, 47, 48, and 49 of the Printed Declaration or Complaint. See Annotations of Ruling Case Law of or construing the said Industrial Act, pp. 49, 50, 51, 52. Other Jurisdictions see pp. 52, 53, and 54. 725 U. S. C. A. 28, see page 54 Printed Declaration. Flementis case, see p. 55; Sullivan case, see p. 56. Moffat, J.; Findings supported by any substantial competent evidence are conclusive. Supreme Court of the State of Utah. See citations pp. 57, 58 of Printed Declaration; Utah Fuel Company vs. Ind. Com. see p. 59 Printed Declaration. Master and Servant. R. S. of Ut. Title 49, p. 60, 61; other cases pp. 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76; of Declaration; (71 C. J.) See p. 77 of Declaration; Other cases see pp. 78, 79, 80, 81; Utah Fuel Co. v. Ind. Comm. See page 81; other cases 82, 83, 84, 85 (S. Ct. of Ut.) 86, 87, 88 (S. Ct. Idaho); other cases p. 89; R. S. of Utah. Title 49. Vice Principal; Title 103, Penal Code, Ch. 1, page 90, Definitions; Several Sections of the Constitution of the State of Utah, page 91, page 92; R. S. of Ut. Ch. 11. Conspiracy. Criminal Conspiracy defined,

p. 92; West Virginia Supreme Court, pp. 93 to 97; Tony Flementis case against the doctors and hospital of the defendant Utah Fuel Company, pp. 98 to 108; certification, p. 108; other sections of R. S. of Ut. pp. 108, 109.

VII. EXCLUSIVE JURISDICTION OF UNITED STATES COURTS.

The law found in this section (28 U. S. C. A. 371) is very clear and provides: The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States. First: Of all crimes and offenses cognizable under the authority of the United States. See the section. No state court can do a thing with the plot or conspiracy and as such it forced martyric sufferings upon this plaintiff. In one case in the District Court of Bergen County, Hackensack, N. J., plaintiff sued three brothers who were trading under the style and title Collis Brothers for wages due and unpaid, about $280.00. The matter came on to be heard and tried before Judge James White and plaintiff asked Judge White to allow him to examine one of the Collis Brothers, James. Judge White answered: Do not put him on the stand, for if you do I will dismiss your case. Plaintiff answered: No! I sooner not. Judge White then gave judgment for the full amount for which plaintiff sued. The Collis Brothers plotted to defraud the wages the same as the defendants Pappas, Rosenkrans et als., at Paterson, N. J. The defendant Pappas, Nicholas J., came there and talked them over and then came into the kitchen and said hello to the plaintiff, but Judge White knew all of these and gave judgment in the case and in

the Case of Curtis vs. Candaras which case went also before him. It follows that for like reasons it is the duty of the federal Courts to do justice in the case according to the right and justice and the laws of the United States.

VIII. WRITS AND PROCESS. POWER TO ISSUE WRITS FOR THE EXERCISE OF JURISDICTION. 28 U. S. C. A. Sec. 377 (Judicial Code, Sec. 262).

The Supreme Court, the Circuit Court of Appeals, and the District Courts shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the usages and principles of law. (R. S. 716; Mar. 3, 1911, c. 231, Sec. 262, 36 Stat. 1162).

a. Definition. The section was enacted by Congress in order to meet cases where there is no specific process provided by statute. John Gund Brewing Co. v. U. S., 206 Fed. .....

b. DECISION OF THE U. S. SUP. COURT ON THE SUBJECT.

See re. United States vs. Fullheart, 47 F. 802, quoted from re: Subold, 100 U. S. 871, on p. 895.

We hold it to be an incontrovertible principle, that the government of the United States may, by means of physical force, exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it. This necessarily involves the power to command obedience to its laws, and hence the power to keep the peace to that extent.

This power to enforce its laws and to execute its functions in all places does not derogate from the power of the state to execute its laws at the same time and in the same places. The one does not exclude the other, except where both cannot be executed at the same time. In that case, the words of the Constitution itself show which is to yield.

"This Constitution, and all laws which shall be made in pursuance thereof, . . . shall be the supreme law of the land."

It (the U. S.) must exercise its powers, or it is no government. It must execute them on the land as well as on the sea, on things as well as persons. And to do this it must necessarily have power to command obedience, preserve order, and keep the peace, and no person or power in this land has the right to resist or question its authority so long as it keeps within the bounds of its jurisdiction.

c. 28 U. S. C. A. 729. "The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of chapter 3 of Title 8, and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; . . ." (see III. 1 to 8 et seq. to par. 19 to Decision of Justice Roberts, inclusive) (pp. 8, 9, et seq. printed parts of the Record in this Court).

d. In the case before the court the jurisdiction of the court below is to be exercised and enforced in "conformity with the Laws of the United States" invoked by the plaintiff which laws are cited and set out in: I, II, III, IV, V, VI, VII, IX, X, XI, XII a. Secs. of Cr. Code. We have

before us then all these said laws to proceed with against the conspirator-defendants.

IX. DISTRICT COURT CANNOT REFUSE TO ISSUE WRITS NECESSARY FOR THE EXERCISE OF ITS JURISDICTION.

a. Paragraph b. VIII is repeated here. 28 U. S. C. A. 103, was made or enacted to take care of this case before the court, as well as all other and further cases similar in nature and character.

b. The right, jurisdiction, power and authority to exercise federal jurisdiction over cases coming within the meaning of the provisions of 28 U. S. C. A. 103, carries with it the right, power and authority to issue and serve writs of summonses to compel appearances by the persons committing the offenses making up the conspiracy.

c. The jurisdiction of the subds. cited in IX is exclusive and the District Court cannot refuse to issue writs necessary to carry their jurisdiction into effect. (III. 8, 9, 10, 11, 12, and 13, supra.)

X. EVIDENCE. (8 U. S. C. A. 41.)

Constitution of the State of Utah. See p. 91 Declaration. (725 U. S. C. A. 28.) (28 U. S. C. A. Sections 687, 688 and 695) (XIV Infra).

XI. JURISDICTION UNDER THE SHERMAN AND CLAYTON ACTS.

The exercise of the power conferred upon the courts by the Constitution and the Acts of Congress, to acquire jurisdiction of controversies and parties by the issue and service of their process, is not discretionary with the Courts, when a complainant demands it. It is an imperative duty, which may not be renounced, and whose discharge may not be evaded. It is the duty of the court below to finally determine the entire controversy before it, and to do complete justice by adjusting all the rights involved therein.

Hence, in every suit in which the power to acquire jurisdiction of the subject-matter and of the parties is conferred upon the court, the duty is imposed upon it, if its discharge is invoked by the complainant, to summon and hear, before decision, not only every indispensable party, but every necessary party within reach of its process, every party who has an interest in the controversy, and who ought to be made a party to the suit in order that the court may finally adjudicate the whole matter, although if he were not amenable to process, final justice might be administered between the other parties without his presence. Sanborn, VanDevanter, Hook and Adams, in re: U. S. v. Standard Oil Co., supra. Citing: Story's Eq. Pl.; Shields v. Barrow, 17 How. 130, 15 L. Ed. 158; Minnesota v. Northern Securities Co., 185 U. S. 199, 255, 22 Sup. Ct. 308, 46 L. Ed. 499.

b. Exclusiveness. The jurisdiction of the District Courts to entertain suits to enjoin violation of the Sherman Anti-Trust Act or the Clayton Act is exclusive, and the state

Courts have no jurisdiction in such cases. Hughes Federal Practice, Sec. 1714. Citing: General Investment Co. v. Lake Shore & M. S. Ry. Co., 260 U. S. 261, 43 S. Ct. 106, 67 L. Ed. 244.

c. Materiality of Amount in Controversy.

The sum or value in controversy is immaterial to the jurisdiction of the District Courts in suits and proceedings arising under any law to protect trade and commerce against restraints and monopolies. (28 U. S. C. A. Sec. 41(1), Jud. Code, Sec. 24(1) last sentence; 15 U. S. C. A. Sec. 15; Hughes Fed. Pr. Sec. 1775.)

XII. JURISDICTION UNDER CIVIL RIGHTS ACTS.

The plaintiff in the suit predicated jurisdiction upon the causes of actions which he alleges in his Declaration under legislation enacted during the reconstruction period (Act of April 20, 1871, Ch. 22, Secs. 1, 2, 17 Stat. 13), and now embodied in the United States Code (8 U. S. C. A. Secs. 43, 47). The latter section (47) expressly authorizes an action for the recovery of damages. Such an action, unless the claim made is purely colorable, is an action based upon the laws of the United States as to which the Federal Courts have jurisdiction. Wilbur, Circuit Judge, in re Mitchell v. Greenough, 100 F. (2d) 184. Citing: Sullivan v. Felix, 5 Cri., 194 F. 88, Id. Affirmed, 233 U. S. 318, 34 S. Ct. 596, 58 L. Ed. 980; McClaine v. Rankin, 197 U. S. 154, 25 Sup. Ct. 410, 49 L. Ed. 702, 3 Ann. Cas. 500; Smith v. Kansas City Title & Trust Co., 255 U. S. 180, 41 S. Ct. 243, 65 L. Ed. 277. See the Reported case Campbellsville Lumber Co. v. Hubbert, 112 F. 718, 50 C. C. A.

435, judgment affirmed Hubbert v. Campbellsville Co., 24 S. Ct. 28, 191 U. S. 70, 48 L. Ed. 101.

b. That the claims made and set forth in the Declaration are not purely colorable see XV hereunder. Also the several sections of 18 U. S. C. A. cited in this section. As for Evidence to sustain every clause of the Declaration see the Photostated and Typed Exhibits Certified to this Court by the Clerk of the Court below.

c. The crimes and offenses defined in Title 18, United States Code, are cognizable in the District Courts of the United States (18 U. S. C. A. Sec. 546. (Cri. Code, Sec. 340.) Hughes Federal Practice, Section 6521.

XIII. FEDERAL RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS OF THE UNITED STATES.

These rules govern the procedure in the District Courts of the United States in all suits of civil nature whether cognizable as cases at law or in equity. They are intended to secure the just, speedy, and inexpensive determination of every action. Rule 1. See page 9 of the Printed Parts of the Record. As to meritorious defenses interposed by the plaintiff under the Federal Rules see pages 10 et seq. of the Printed Parts of the Record.

XIV. EVIDENCE. ACTS, DECLARATIONS AND THE RECORDS OF THE COURTS AND JUDICIAL PROCEEDINGS CONCLUSIVE PROOF.

1. Supreme Court Encyclopedia C. p. 1102. Responsibility of conspirators for acts of co-conspirators.

In a conspiracy every act of one of the conspirators in furtherance of the common design is in contemplation of law the act of all. Act of one Act of All, United States vs. Gooding, 12 Wheat 466, 469, 6 L. Ed. 993; Lincoln vs. Claflin, 7 Walls 132, 138, 19 L. Ed. 106; Nudd vs. Burrows, 91 U. S. 426, 438, 23 L. Ed. 286; Logan vs. United States, 144 U. S. 263, 309, 36 L. Ed. 429; Brown vs. United States, 150 U. S. 93, 98, 37 L. Ed. 1010; Boyd vs. United States, 142 U. S. 540, 455, 35 L. Ed. 1076.

2. Encyclopedia of United States Supreme Court. Reports Vol. 3, 1108. Conspiracy, C. Who Liable.—Prearrangement is not essential to a recovery against one of several conspirators. It is sufficient to show that he subsequently, with knowledge of the conspiracy became a party to it. His subsequent participation in the conspiracy and its fruits is as effective to charge him as if he had been a party to it originally. Lincoln vs. Claflin, 7 Wall, 132, 19 L. Ed. 106.

3. IV. Evidence. A

Acts and Declarations of one as evidence against the others.—In case of conspiracy when once the conspiracy or combination is established, the act of one conspirator, in the prosecution of the enterprise, is considered the act of all. Each is deemed to consent to, or command, what is done by any other, in furtherance of the common object.

American Fur Co. vs. United States, 2 Reb. 358, 365, 7 L. Ed. 450; Nudd vs. Burrows, 91 U. S. 426, 438, 23 L. Ed. 286; United States vs. Gooding, 12 Wheat, 460, 469, 6 L. Ed. 693; Logan vs. United States, 144 U. S. 263, 309, 36 L. Ed. 429; Brown vs. United States, 150 U. S. 93, 98, 39 L. Ed. 1010; Bannon vs. United States, 166 U. S. 464, 469, 39 L. Ed. 494; Clune vs. United States, 159 U. S. 590, 593, 4 L. Ed. 269; Connecticut Mut. Life Ins. Co. vs. Hullmon, 188 U. S. 208, 218, 47 L. Ed. 446; Lincoln vs. Claflin, 7 Wall, 132, 19 L. Ed.

Sup. Ct. Encyc. Officers and Agents of Private Corporations.

4. IX. Liability of Corporation for Acts of Agents and Rights Thereunder.

As to corporations necessarily act by agents, a corporation is liable for the acts of its servants while engaged in the business of their employment, to the same extent that individuals are liable under like circumstances. 21. Orleans vs. Platt, 99 U. S. 676, 682, 25 L. Ed. 404; Philadelphia, etc. R. Co. vs. Quigley, 21 How. 202, 209, 16 L. Ed. 73; Baldwin vs. Bank, 1 Wall, 234, 240, 17 L. Ed. 534. Railroad Co. vs. Howard, 7 Wall, 392, 413, 19 L. Ed. 117.

5. The officers of a corporation are held out to the public as having authority to act according to the general usage, practice and course of their business, would, in general, bind the corporation in favor of third persons possessing no other knowledge. Minor vs. Mechanic Bank, 1 Pet. 46, 7 L. Ed. 47. "The acts of a single duly authorized agent of a corporation, bind the corporation although he keeps no minutes of such acts. They may be, and they are, daily, proved ? ." United States Bank vs. Dandridge, 12 Wheat 64, 83, 6 L. Ed. 552.

6. "The officer is the corporation for many purposes." Pollard vs. Minton, 105 U. S. 7, 12; 26 L. Ed. 998. Sup. Ct. Encyc., p. 965.

7. VI. A 5. Ratification and Estoppel to Deny Authority.—And it is settled law that the existence of the requisite authority in subordinate officers may, in the absence of express statutory prohibition, be shown otherwise than by the official record of the proceedings of the board. It may be established by proof of the course of business between the parties themselves; by the usages and practice which the company may have permitted to grow up in its business; and by the knowledge which the board charged with the duty of controlling and conducting the transaction and property of the corporation, had, or must be presumed to have had, of the acts and doings of its subordinates in and about the affairs of the corporation. Mining Co. vs. Anglo-California Bank, 104 U. S. 192, 194, 26 L. Ed. 707.

8. Where the officer was held out to the world as competent to do what he did, and it was done in conformity to the established usage of the company in all such cases, under such circumstances, the institution cannot be permitted to deny that he had all such powers as he habitually exercised, and thus assumed to have. Cresswell vs. Lanahan, 101 U. S. 347, 351, 25 L. Ed. 853; Merchants Bank vs. State Bank, 10 Wall, 604, 19 L. Ed. 1008; Hubard vs. Todd, 171 U. S. 474, 496, 43 L. Ed. 246; Putnam vs. United States, 162 U. S. 687, 713, 40 L. Ed. 1118.

XV. JUDICIAL NOTICE 28 U. S. C. A. 695, 687, 688. UNITED STATES CODE ANNO.

a. Title 28, Sec. 687. *Authentication of legislative acts; proof of judicial proceedings of States.*

The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory, or country affixed thereto. The records and judicial proceedings of the Courts of any State or Territory, or any such country, shall be proved or admitted in any other Court within the United States, by the attestation of the Clerk, and the seal of the Court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form.

And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every Court within the United States as they have by law or usage in the Courts of the State from which they are taken. (R. S. Sec. 905; Act Mar. 27, 1804, c. 56, Sec. 2, 2 Stat. 299.)

b. U. S. C., Title 28, Ch. 19—*Evidence.* Sec. 695. *Writings and Records Made in Regular Course of Business.*

In any Court of the United States or in any Court established by Act of Congress, any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction or occurrences, or event, if it shall appear that it was the

regular course of such business to make such memorandum or record at the time such act, transaction, occurrences or event or within a reasonable time thereafter.

The term "business" shall include business, profession, occupation, and calling of every kind. (June 20, 1936, C. 640, Sec. 1, 49 Stat. 1561.)

c. U. S. C. A. Title 28, Sec. 688. *Proofs of records in offices not pertaining to Courts.*

All records and exemplifications of books which may be kept in any public office of any State or Territory, . . . not appertaining to a Court, shall be proved or admitted in any Court or office in any other State or Territory, . . . by the attestation of the keeper of the said records or book, and the seal of his office annexed, . . . or keeper of the great seal of the State, or Territory or country, that the said attestation is in due form, and by the proper officer. . . . And that the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every Court and office within the United States as they have by law or usage in the Courts or offices of the State, Territory, or country as aforesaid, from which they are taken. (R. S. Sec. 906.)

XVI. THE PROCESS OF THE COURT BELOW.

We have, 28 U. S. C. A. 729, commanding the District Court of the United States for the District of New Jersey, thus:

a. "The jurisdiction in civil and criminal matters conferred upon you by the provisions of chapter 3 of Title 8,

and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and inforced by you in conformity with the laws of the United States, in so far as such laws are suitable to carry the same into effect; . . .

b. 28 U. S. C. A. 103, is a law of the United States. Origin of the Section. This said section was a part of the same section which defined conspiracy. Hyde vs. United States, 225 U. S. 347, 32 S. Ct. 793, 56 L. Ed. 1114. The section. THIRTY-NINTH CONGRESS. SESS. II. CHAP. CLXIX (169), SECTION 30 on page 484:

And be it further enacted. That if two or more persons conspire either to commit any offense against the laws of the United States, or to defraud the United States in any manner whatever, and one or more of said parties to said conspiracy shall do any act to effect the object thereof, the parties to said conspiracy shall be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to a penalty of not less than one thousand dollars and not more than ten thousand dollars, and to imprisonment not exceeding two years. And when any offense shall begin in one judicial district of the United States and completed in another, every such offense shall be deemed to have been committed in either of the said districts, and may be dealt with, inquired of, tried, determined and punished in either of said districts, in the same manner as if it had been actually and wholly committed therein.

2. 8 U. S. C. A. 41, 43, 47. For the Text of Sections 41 and 43 see them in the Appendix 3a. For the Text of Section 47 see p. 82 and part of p. 83 of the Typed Record. For the present Text of Section 103 of Title 28 U. S. C. A. see it on p. 68 of the typed Record of pleadings. 8 U. S.

C. A. 41, and 729 U. S. C. A. 28, see page 70 Typed Record of Pleadings.

3. District Courts. Jurisdiction of suits against trusts, conspiracies, monopolies, and unlawful combinations. Hughes Fed. Pr. Sec. 1776. See page 75 of typed Record of Pleadings.

4. The place of trial could be any state and district where an overt act was performed. Brown v. Elliot, 225 U. S. 136. The venue of his trial is made by the criminal himself. Brown v. Elliot. See page 76 typed Record of Pleadings.

5. There is no principle of Constitutional Law which entitled one to be sued for a criminal offense in the district where he resides. Haas v. Henkel. See page 77 typed Record of Pleadings. Venue. See page 79 of the Record of Pleadings.

6. Jurisdiction of District Courts. The crimes and offenses defined in this title shall be cognizable in the District Courts of the United States, as prescribed in section 41 of Title 28 (Mar. 4, 1909, c. 321, Sec. 340, 35 Stat. 1153); Hopkins New Fed. Penal Code, Sec. 546 (Cri. Code, sec. 340). (28 U. S. C. A. 729.) (R. S. of New Jersey. 2:12-2. Gen. Jurisdiction to make and Continue Process.) (28 U. S. C. A. 725, 729.)

7. The overt act.—Defined. Is an act done in furtherance of the object of the conspiracy. U. S. v. Cassidy, 67 Fed. (2d) 712,714. (H. N. Fed. Pr. Penal L.)

8. By whom committed. The act of one conspirator in furtherance of the common design is the act of all. U. S.

v. Olmstead, 5 Fed. 2d. (2d.) 712, 714 (cases collected); Morrow v. U. S., 11 F. (2d) 256, 259, C. C. A. (cases collected). (H. N. Fed. Pen. Code.)

9. But one necessary. Only one overt act need be established. U. S. v. Olmstead, 5 F. (2nd) 712, 715 (cases collected).

OVERT ACT. HOW PLEADED. FORM 875 et seq. Allegations of. Form 809, et seq. H. N. Fed Pr.

10. Venue. Is the place of formation of the conspiracy, or the place of commission of an overt act. Hyde v. U. S. 225 U. S. 347, 32 S. Ct. 793, 56 L. Ed. 1114.

Hop. N. Fed. Pen. C. p. 17.

11. Conspiracy.—That the venue may be laid in any district where an overt act has been committed (cases collected in Morris v. U. S. 7 Fed. 2d. 785, 789, C. C. A. 8) has at times given the Government a wide range of choice as to the place of trial, exercised in at least one instance by bringing defendants residing a long distance from the place of trial to be tried in a strong Ku Klux Klan district. (Lucking v. U. S. 14 Fed. 2nd. 881—statement of facts). Again a shrewd practice which might be open to criticism, but fully warranted by the legal principles that the overt act of one conspirator is the act of all the conspirators (U. S. v. Rabinowich, 238 U. S. 78, 35 S. Ct. 682, 684, 59 L. Ed. 1211, and cases collected in Morris v. U. S., 7 Fed. (2nd) 785, 789. (C. C. A. 8.)

12. Construction of Federal Penal and Criminal Laws: rules as to strict construction.—Penal statutes are to be construed strictly (U. S. v. Wiltberger, 5 Wheaton 76, 5 L. Ed. 37) but not so strictly as to defeat the obvious

intention of the legislature (U. S. v. Morris, 14 Pet. 464, 10 L. Ed. 543).

13. The intention of such statute must be found in language actually employed, interpreted according to its fair and obvious meaning (U. S. v. Haris, 177 U. S. 305, 20 S. Ct. 609, 44 L. Ed. 780. Pars. 9 to 13. See Hopkin's New Federal Practice.)

14. "Pleading the statute" is stating the facts which bring the case within it, and "counting" on it is making express reference to it by apt terms to show the source of right relied on. Atlantic Coast Line R. Co. v. State, 74 So. 595, 599, 73 Fla. 609 (b. p. 3 Declaration.) (28 U. S. C. A. 41, subds. entered; 103, 725, 729; 8 U. S. C. A. 41, 43, 47; 15 U. S. C. A. 1 to 7, 15, 22, 24, 26).

15. Pleading the statute is stating the facts which bring the case within it. Cullough v. Colfax County, Neb., 95 N. W. 29, 37.

16. The rule is now well settled that prosecution for conspiracy may be maintained either in the district in which the conspiracy was entered into or in any district in which an act was done to effect the object of the conspiracy". Hyde vs. Shine, 199 U. S. 62, et seq., 25 S. Ct. 760, 5 L. Ed. 90 and about 15 other S. Ct. cases. Note 13 under section 103 U. S. C. A. 28. (729 U. S. C. A. Title 28). Venue. Encyclopedia of United States Supreme Court Reports, Vol. 11, p. 916. (See III—Par. 17.) (28 U. S. C. A. 103, 729.)

17. In a conspiracy every act of one of the conspirators in furtherance of the common design is in contemplation

of law the act of all. Act of one Act of All. United States vs. Gooding, 12 Wheat 466, 469, 6 L. Ed. 993; Lincoln vs. Claflin, 7 Wall. 132, 138, 19 L. Ed. 106; Nudd vs. Burrows, 91 U. S. 426, 438, 23 L. Ed. 286; Logan vs. United States, 144 U. S. 263, 309, 36 L. Ed. 429; Brown vs. United States, 150 U. S. 540, 455, 35 L. Ed. 1076. S. Ct. Encyc. C. p. 1102. Responsibility of conspirators for acts of co-conspirators. (8 U. S. C. A. 47; 28 U. S. C. A. 103; 15 U. S. C. A. 1 to 7, 15, 22, 24, 26.) (28 U. S. C. A. 729.)

18. The alleged conspiracy is one. Its scheme is single; it has but one Object (Sanborn, VanDevanter, Hook, and Adams, C. J. supra). The defendant Utah Fuel Company, the principal defendant in the suit; the originator and operator of the conspiracy is a citizen and resident of the District of New Jersey, residing within the division of the federal court at Newark, N. J. It, together with its associated corporations, operates the largest industries of the State of Utah. There it, together with its associated corporations, operated the alleged conspiracy openly for years in manners and brutality or brutalities of the days before the Civil War. The whole of it is done, caused to be done, supervised to be done, and executed by and through its Officers and Agents in charge and operation of its Headquarters in Jersey City, New Jersey. The principles of the case of Vacuum Oil Co. v. Eagle Oil Co., supra, govern the case under consideration and the answer to the question must be that the non-resident defendants were and are amenable to the process of the Court below.

19. 15 U. S. C. A. Sec. 22. VENUE OF ACTIONS AGAINST CORP'S. SERVICE OF PROCESS.

Any suit, action or proceeding under the anti-trust laws against a corporation may be brought not only in the

judicial district wherein it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found. (Oct. 15, 1914, Ch. 323, Sec. 12, 38 Stat. 736.) (XVI. par. 18.) (15 U. S. C. A. Sections 1, 3, 4, 5, 15, 24. See them in the Appendix to this Brief, pp. 4a-5a.)

20. 18 U. S. C. A. 550. "Principals Defined". See the section, p. 15a of the Appendix.

21. All persons who aid or abet in commission of a misdemeanor are "principals". Buttler v. State, 198 S. E. 184, 55 Ga. App. 678; Lewis v. State, 195 S. E. 285, 286, 57 Ga. App. 340; Johnson v. State, 197 S. E. 61, 57 Ga. App. 814.

22. Person who aids or abets another in committing misdemeanor is "principal". Lancaster v. Pitts, 122 So. 531, 532, 154 Miss. 406.

23. A person present, aiding and assisting another in commission of an offense is a "principal". Fleming vs. Commonwealth, 290 S. W. 339, 342, 217 Ky. 485.

24. Those who are present aiding, commanding, or abetting are deemed "principals". United States v. Young & Holland Co., 170 F. 110, 113, citing United States v. Gooding, 12 Wheat. (25 U. S.) 460, 4472. 6 L. Ed. 693.

25. Common Law. All who are present aiding and abetting in a felony, are treated as "principals", while in the case of a misdemeanor all who aid, abet or participate are considered as principals of equal guilt.

Supreme Court of the State of New Jersey in re State vs. Woodworth, 1 A. (2nd) 254, 257, citing: Engeman v. State, 54 N. J. L. 65; Roesel v. State, 62 N. J. L. 216, 222, 41 A. 408; State v. Warady, 78 N. J. L. 687, 75 A. 977; State v. Wilson, 79 N. J. L. 241, 78 A. 144; State vs. Spence, 81 N. J. L. 265, 79 A. 1029; State vs. Hanraha, 87 N. J. L. 391, 96 A. 1103; State vs. Carlino, 98 N. J. L. 48, 118 A. 784, affirmed 99 N. J. L. 292, 122 A. 830; State vs. De Bellis, 136 A. 603, 5 N. J. Misc. 375, 104 N. J. L. 187, 138 A. 923, 143 A. 330; State v. Dobow, 117 N. J. L. 560, 189 A. 915, 109 A. L. R. 1488, 2 Hawk, P. C. Chap. 29, Sec. 1; 4 Blackstone's Com. 34; Reg. v. Greenwood, 185, 9 Eng. L. & Eq. Rep. 235.

26. THE LAW WELL SETTLED. The law is well established that "Principal jurisdiction involves and carries along with itself power over matters that can properly be regarded as accessories. * * * And by virtue of this principle the District Court has jurisdiction of many matters as ancillary over which there would be no jurisdiction, were these matters independent and standing alone." (1-3) Loft, Inc. v. Corn Products Refining Co. 7 Cri., 103 F. 2d. 1, 10 (quoting Dobie on Fed. Procedure; Venner v. Pennsylvania Steel Co. 250 F. 292; Eichel v. United States F. & G. Co., 245 U. S. 102, 38 S. Ct. 47, 62 L. Ed. 177; Pell v. McCabe, 2 Cir., 256 F. 512; Wilson v. United American Lines, 21 P. 2d 872. . . . To prevent the relitigation in other courts of the issues heard and adjudged in the original suit.

(3) Seemingly Rule 4 (e) was intended to apply to suits in rem and suits where special statutes authorized an action against a noninhabitant. However to obtain legal service to sustain jurisdiction, ancillary or otherwise, in default of special statute Rule 4 (e) must be followed.

27. The court below is invested with jurisdiction to prevent and restrain violations of sections 1 to 7, inclusive, or section 15 of Title 15 U. S. C. A. (July 2, 1890, c. 647, Sec. 4, 26 Stat. 209; Mar. 3, 1911, c. 231, Sec. 291, 36 Stat. 1167.)

The court below is invested with jurisdiction of the conspiracy alleged in the Complaint, and it writes down "contract". How many "contract" are there in 25 Counts alleged in the Declaration?

The plaintiff herein made appear (pp. 1, 2, 3 Declaration) that the ends of justice require that the non-resident defendants should be brought before the court below, and the court below caused them to be summoned, and it is immaterial whether they reside in the district in which the court is held or not; and the summonses to that end were served in the respective districts of the non-resident defendants by the marshals thereof (Title 15, U. S. C. A. Sec. 5; July 2, 1890, c. 647, Sec. 5, 26 Stat. 210; and see: Sec. 103 U. S. C. A. Title 28 supra); People's Tobacco Company v. American Tobacco Company, 246 U. S. 79, 87, 38 S. Ct. 233, 62 L. Ed. 587, Ann. cas. 1918 C. 537;

Gen. Inv. Co. v. Lake Shore Ra'wy, 260 U. S. 261, 279, 43 S. Ct. 106, 67 L. Ed. 244;

Minnesota v. Northern Securities Co., 194 U. S. 48, 71, 24 S. Ct. 598, 48 L. Ed. 870;

Wilder Manufacturing Co. v. Corn Product Refining Co., 236 U. S. 165, 174, 35 S. Ct. 398, 59 L. Ed. 520; and cases in point. See also Sanborn, VanDevanter, Hook, and Adams in re United States vs. Standard Oil Co., supra. (28 U. S. C. A. 729.)

28. As to whether or not any overt acts were committed within the jurisdiction of the court below in furtherance of the common design or the conspiracy so operated within

the Territorial Jurisdiction of the United States District Court for the District of New Jersey giving the said Court jurisdiction of the whole case see:

Curtis vs. Pappas et al. Paterson, N. J. District Court;

Curtis vs. Peraino, 4th Judicial Dist. Ct. of Bergen County, two cases;

Village of Ridgewood vs. James Damis, Court of Chancery of New Jersey; material parts of the Record submitted to Judge Walker of the court below;

Curtis vs. Peraino, C. Ct. of Bergen County, N. J.

UNITED STATES DISTRICT COURT, DISTRICT OF NEW JERSEY.

Cases in which Nicholas J. Curtis is or was a party.

E-2331. Curtis vs. American Tel & Tel. Co. et als. Order dismissing case without costs.

E-4129. Curtis vs. Citizens Nat. Bank & Trust Co. et als. Order dismissing case pursuant to General Rule 27.

E-5109. Curtis vs. Minas Candaras, et al. Order dismissing case with costs to defendants.

L-1722. Curtis vs. Paramount Famous Lasky Corp., et als. Order dismissing case.

L-4628. Curtis vs. Pappas, et al. Order striking out complaint with costs to defendants.

L-4759. Curtis vs. Pappas, et als. Order dismissing case pursuant to Rule 27.

L-5773. Curtis vs. Utah Fuel Company. Order granting motion to strike complaint and dismissing motion for rehearing.

Civil 728. Curtis vs. Utah Fuel Company et als now under consideration.

For a period of 14 long years the court below is blockaded and besieged by the operation of the conspiracy and the

defendants in the suit pending are sued only for their parts of the or in the prosecution of the conspiracy.

XVII. SERVICE OF PROCESS.

1. XVI. paragraphs 1 to 27 repeated here. The sections just above.

2. Hughes Federal Practice. SERVICE UNDER STATUTE OF UNITED STATES. Section 18911. In General. Rule 4 (d) (7) provides, that in addition to the method of service provided for in Rule 4 (b) (1) and (3) upon individuals, corporations, partnerships or unincorporated associations, such defendants may also be served in the manner prescribed by any statute of the United States or by the law of the state in which service is made. The rule reads: "Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if the summons and complaint are served in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state."

2. Under Rule 81 (e) the law of the state includes the statutes of the state and state court decisions construing them. Citing U. S. C. A. Title 28, Sec. 725.

3. H. Fed. Pr. Sec. 18912. STATUTES OF THE UNITED STATES COVERING SERVICE.

Various Statutes of the United States provide specially a method of service in cases covered by them. . . .

4. H. Fed. Pr. Sec. 18913. SERVICE IN THE MANNER PRESCRIBED "BY ANY STATUTE OF THE UNITED STATES." . . . The reference in Rule 4 (d) (7) to service in the manner prescribed "by any statute of the United States" covers service in cases brought under particular statutes of the United States, which themselves provide a method of service. The meaning of Rule 4 (d) (7) is that in such case a particular method of service provided for by the particular statute may be followed.

5. H. Fed. Pr. Vol. 17, p. 203, Section 18993. PROCESS. TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

Rule 4 (e) also provides that "where a statute of the United States so provides" service may be made beyond the boundaries of the state. There are several such statutes already in force—11—11. Such statutes include:

15 U. S. C. A. Sec. 5, permitting the bringing in of additional parties under the Sherman Acts; 15 U. S. C. A., Sec. 25; 15 U. S. C. A., Sec. 22. District in which to sue corporation. Clayton Act, Sec. 25. The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of Secs. 12, 13, 14, 21, and 22-27 of this title. . . . Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpoenas (Summons) to that end may be served in any district by the Marshal thereof. Oct. 15, 1914, c. 323, Sec. 15, 38 Stat. 736. (28 U. S. C. A. 729). Sec. 44, permitting process to run anywhere in certain cases under the interstate commerce act.

Anti-Trust Act: Act of July 2, 1890, referred to in text, is set out as sections 1-7, and 15 Note. Sec. 15 applies to the provisions of this chapter generally.

6. There cannot be any doubt that 28 U. S. C. A. 103 prescribes the method prescribed by Federal Rule 4 as to the services of processes on parties defendants within its district. The statute is mandatory and in the instant case directs the plaintiff to proceed with the services of process by the same method he proceeded in serving those physically present within the district. Construction of the Statute, see III, subds. 16, 17, 18, supra.

The nonresident defendants are aiders and abetters within the meaning of Section 103 of Title 28, and the decision of Judges: Davis, Avis, and Clark in the Callahan case, 53 F. 2d. 467, is controlling authority on the case under consideration.

7. The Counts of aiding and abetting the defendant Utah Fuel Company in the prosecution of their conspiracy are based upon the provisions of the law found in 18 U. S. C. A. 550, and the conspiracy is a violation of section or the law found in Section 88 of Title 18, and the decision of Judge Forman of the court below in re: United States v. Jacobson, et al., District Court of the United States, District of New Jersey, July 19, 1940, 34 Fed. Supp. 215, is controlling authority on the case under consideration, to wit:

Forman, District Judge. The charges of aiding and abetting are based upon the provisions of the law found in 18 U. S. C. A., Sec. 550, and the conspiracy is alleged to be a violation of 18 U. S. C. A., Sec. 88. (Conclusions.)

It follows that for like reasons the court is of the opinion that the objections to the counts on aiding and abetting, and the count on conspiracy must be overruled. Each of the motions to quash on behalf of the defendants Jacobson and Cherry are denied.

To the same effect the Decisions of Davis, Clark, and

Avis, JJ., in Re: Calahan vs. United States, III. Par. 18, subd. c, supra; II. par. 4, Clark, C. J., in United States vs. Silverman, and cases collected and cited thereunder.

8. Haskel v. Aluminum Company of America, et al., 14 F. 2d. 864.

(1) It seems to be too firmly established to admit of argument that in statutes affecting venue the word "found" has been given a definite legal significance when applied to foreign corporations, and it will be presumed that, when Congress enacted the Clayton Act, it used the word as defined by the courts. Standard Oil Co. v. United States, 221 U. S. 1 at 59, 31 S. Ct. 502, 55 L. Ed. 619, 34 L. R. A. (N. S.) 834, Ann. Cas. 1912D, 734.

(3) On page 869. As I interpret the statute, such a plaintiff is at liberty to sue the offending defendant corporation (1) in the district where incorporated; (2) in the district where it is "found," as that word has been defined by the Courts; and (3) where it transacts business. . . . This court, therefore, has jurisdiction to entertain the action, because this is the district in which the defendant Aluminum Company of America is "transacting business." This construction of the act has been adopted by the federal courts in several cases. Venner v. Pennsylvania Steel Co. (D. C.), 250 F. 293; Southern Photo Material Co. v. Eastman Kodak Co. (D. C.), 254 F. 955; Eastman Kodak Co. v. Southern Photo Material Co. (C. C. A.), 295 F. 98; Frey & Son, Inc. v. Cudahy Packing Co. (D. C.), 228 F. 209.

I rule, therefore, that the plaintiff may resort to this court in an action to enforce his remedy under the anti-trust laws, and the suit should not be dismissed because of lack of jurisdiction.

(4) The remaining question of importance is whether the Court has acquired jurisdiction over the defendant by proper service upon it. . . .

The contention of the defendant respecting the service of process in Pennsylvania is that this court has no authority to issue a writ directed to the Marshal of the district of Western Pennsylvania, and if it has such authority it cannot be exercised without special order of the court.

(5, 6) As to the power of the court to issue process to run into other districts, I find that under the general provisions of law a United States District Court cannot issue process beyond (etc.).

But it can no longer be doubted that Congress has the power to confer upon that court authority to issue process beyond the territorial limits of its district. United States v. Union Pacific Railroad Co., 98 U. S. 569, 25 L. Ed. 143; Robertson v. Railroad Labor Board, Supra.

The Sherman Act of 1890 (Act of July 2, 1890, c. 647, Sec. 5, 26 Stat. 209, 210 (Comp. St. Sec. 8827), and Section 15 of the Clayton Act (Comp. St. Sec. 8835n), contain provisions which enable the court to send its process into other districts, to be served by the Marshal thereof, when, in any pending case, the ends of justice require that other parties shall be brought before the court. Section 12 of the Clayton Act is another instance of this special grant of power. It expressly provides that process may be served in the district of which the corporation is an inhabitant or wherever it may be found.

In enacting these provisions, Congress, in my opinion, contemplated the possibility that a suit might be brought within the jurisdiction of a court whose process would not reach to the defendant without enabling legislation,

and the provision was inserted in order that any court of competent jurisdiction might send its process for service into the district where the corporation was incorporated, or where it was transacting business so as to be amenable to legal process in that district.

When Congress provided that "all process" could be served in the district of which the corporation was an inhabitant, or wherever it might be found it had in mind any process issued by such court of competent jurisdiction *in conformity with the practice of that court.*

The writ issued in the case at bar in all respects conformed to the practice obtaining in this district in law actions, and the local rules relating to the manner of its issuance were complied with. In issuing similar process, under analogous provisions authorizing extra-territorial service, it has never, so far as I can learn, been deemed necessary to obtain an order of court.

9. U. S. C. A. Sec. 729. Ex Parte United States, 101 F. 2d. 870. The United States Petitioner Applying for Writ of Mandamus.

(13) See the par. in the reported case.

(14, 15) pp. 877-878. Section 722 of the Revised Statutes of the United States, which today primarily governs the criminal procedure of federal trial courts, provide that the trial court can follow the Wisconsin State Practice, so long as that practice is not offensive to the Constitutional guaranty of trial by jury. Title 28, Sec. 729, U. S. C. A. 28, U. S. C. A. Sec. 729. That the procedure in question does not violate the Sixth Amendment to the Constitution already has been shown.

(16, 20) . . . In the absence of prohibitive legislation courts have inherent power to provide themselves with appropriate procedure required for the performance of their tasks. Ex Parte Peterson, 253 U. S. 300, 312, 313, 4 (,) S. Ct. 543, 64 L. Ed. 919; Funk v. United States, 290 U. S. 371, 381, 384, 54 S. Ct. 212, 79 L. Ed. 369, 93 A. L. R. 1136.

10. Chulis v. Lehigh Valley Coal Co., 233 F. 422.
Judge Hough, writing for the Court, said:
"But there is a wide difference between the method of serving a summons and the effect of such service when made. The first relates to the 'form, manner, and order of conducting and carrying on suits.' The effect of the formal act called 'service' is not a question of practice at all, but one of jurisdiction, and jurisdiction in turn must be tested by substantive law." Par. quoted in Melckon v. Collins, et al., 30 F. Supp. (4) on page 161.

11. 28 U. S. C. A. 725. "It is sufficient if the summons and complaint are served in the manner prescribed by any statute of the United States."

(1) The service of summonses in the case under consideration upon the nonresident defendants is authorized by the law found in 103 of Title 28, U. S. C. A.

(2) The service of process in the suit under consideration is also authorized by the law found in section 5 of Title 15, U. S. C. A. . . . and subpoenas (summons) to that end may be served in any district by the Marshal thereof. (28 U. S. C. A. 729.)
The court may cause them to be summoned, whether they reside in the district in which the court is held or not; . . . (July 2, 1890, c. 647, Sec. 5, 26 Stat. 210).

(3) The United States Marshals and their deputies have, in each State, the same powers, in executing the laws of the United States as the Sheriffs and their deputies in such State may have by law in executing the laws thereof. Sec. 504 of Title 28, U. S. C. A.

(4) R. S. of Utah. 104-5-3. Id. Service.—Who may Serve—Return.

The summons, together with a copy of the complaint, if any, may be served by the Sheriff of the county where the defendant may be found, or by any person over twenty-one years of age and not a party to the action. The Officer or other person serving a summons shall make due return thereof, within five days after service, to the person whose name is subscribed thereto. (C. L. 17, Sec. 6540.)

The Supreme Court of the State of Utah construes this said Statute (104-5-3-R. S. of Utah) as follows:

Straup, J. We are also of the opinion that the court erred in sustaining the demurrers.

There is nothing appearing on the face of the complaint from which it can be said that the defendants were not subject to the process and jurisdiction of the court. A demurrer for want of jurisdiction of the person raises only the question as to whether the defendant is such a person as can be subjected to the process and jurisdiction of the court. The court having jurisdiction of subject-matter acquires jurisdiction of a defendant either by his voluntary appearance or by process served upon him. The statute provides that the summons and a copy of the complaint may be served "where the defendant may be found." Continental Life Ins. and Inv. Co. v. Jones, 31 U. S. 403, 88 P. 229.

104-5-4. Id. On defendants residing in different Counties. Where there are several defendants residing in dif-

ferent counties, separate summons may be issued and served on the defendants residing therein. (C. L. 17, Sec. 6541.)

104-5-5. Id. Time of Service—Alias Summons. . . . If a summons is returned without being served upon any or all the defendants, another summons may be issued and served at any time within one year after the filing of the complaint. (C. L. 17, Sec. 6542.)

104-5-11. Manner of Serving Summons. The summons must be served by delivering a copy thereof as follows: (5) If the defendant is a domestic corporation, to the president or head of the corporation, secretary, treasurer, cashier or managing agent thereof.

(8) In all other cases, to the defendant personally, or by leaving such copy at his usual place of abode with some suitable person of at least the age of fourteen years.

104-5-18. Jurisdiction, When Acquired. From the time of the service of the summons or the filing of the complaint in a civil action the court is deemed to have acquired jurisdiction and to have control of all subsequent proceedings. (C. L. 17, Sec. 6559.)

13. In the manner prescribed by any statute law of the United States." Section 103 of Title 28, U. S. C. A., is a statute of the United States and prescribes the manner of dealing with the subject matter and the defendants as if the offenses against the laws of the U. S. were wholly committed within the Territorial Limits of the court below by parties defendants residing therein. The statute governs the whole United States as a single "district."

14. Federal Rule 4 (f). Bowser v. Daro, et al. (D. C., N. D. Cal., Jan. 23, 1941.

(2) . . . If the fact is that this moving defendant has been improperly joined in this action, his right is to object to his joinder as a co-defendant, and to obtain the relief afforded him by law by reason thereof.

However, motion to quash service and return of summons is not the appropriate method of raising the objection of misjoinder.

15. For authorities on this Question (XVII. c. of Questions Involved) see the decision and Notes thereunder of the Case of Clancy v. Balacier, et al., District Court of the United States, for the Southern District of New York, 27 Fed. Supp. 867, it is set out almost in full on pp. 71, 72 of the Typed Record of Pleadings on file in this Court.

16. Hughes Federal Practice, 18914. SERVICE IN THE MANNER PRESCRIBED BY STATE LAW.—WHAT IS LAW.

Rule 4 (d) (7) provides that: "Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of the rule, it is also sufficient if the summons and complaint are served * * * in the manner prescribed by the law of the state in which service is made."

Rule 81 (e) provides "When the law of a state is referred to, the word 'law' includes the statutes of that state and the state judicial decisions construing them." (28 U. S. C. A. 725.) See the several paragraphs just above.

XVIII. EXERCISE OF JURISDICTION.

The exercise of the power conferred upon the courts by the Constitution and the Acts of Congress, to acquire jurisdiction of controversies and parties by the issue and service of their process, is not discretionary with the Courts, when a complainant demands it. It is an imperative duty, which may not be renounced, and whose discharge may not be evaded. It is the duty of the Court below to finally determine the entire controversy before it, and to do complete justice by adjusting all the rights involved therein. Hence, in every suit in which the power to acquire jurisdiction of the subject matter and of the parties is conferred upon the courts, the duty is imposed upon it, if its discharge is invoked by the complainant, to summon and hear, before decision, not only every indispensable party, but every necessary party within reach of its process, every party who has an interest in the controversy, and who ought to be made a party to the suit in order that the court may finally adjudicate the whole matter although if he were not amenable to process, final justice might be administered between the other parties without his presence. Sanborn, VanDevanter, Hook, and Adams, In Re: U. S. v. Standard Oil Co., supra. Citing: Story's Eq. Pl.; Shields v. Barrows, 17 How. 130, 15 L. Ed. 158; Minnesota v. Northern Securities Co., 185 U. S. 199, 255, 22 Sup. Ct. 308, 46 L. Ed. 499.

XIX. JURISDICTION TO DISCHARGE CONSPIRATORS.

1. First sentence. A judgment (findings of fact and conclusions of law) applies the law to past or present facts. See page 27 of the printed parts of the Record of Pleadings as printed for the use of this court. See last par. of page 77, and four paragraphs on page 78 of the typed Record of Pleadings as filed in this Court.

Second sentence. (III. Par. 16 supra, 2:119—1, 2. R. S. of New Jersey.)

2. As to Ruling on Motion No. 1. Appearance Addison P. Rosenkrans, Esq., attorney for defendants, Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans. May it please the Court see page 9 supra.

MALPRACTICE. (38 C. J.) p. 520. As applied to attorneys at law, evil practice in a professional capacity and a resort to methods prohibited by law. Matter of Baum, 5 Silv. Sup. 462, 463, 8 N. Y. S. 771; Matter of Post, 4 Silv. Sup. 248, 249, 7 N. Y. S.; In Re: Rosenkrans, 84 N. J. Eq., 232, 241, 94 A. 42. MALPRACTICE may be either willful, negligent or ignorant. In Re: Rosenkrans.

3. In Re: Rosenkrans. (No. 39/653) Court of Chancery of New Jersey. April 30, 1915. 94 A. 43.

In the matter of Addison P. Rosenkrans, a solicitor of the Court of Chancery of New Jersey. On order to show cause why respondent should not be disbarred or otherwise disciplined and punished. Respondent suspended. Walker, Ch.

(2) Here we have a case of a solicitor of this court counseling and procuring a client to make an affidavit "that

she is the petitioner named in the foregoing petition," when, in fact, there was no petition in existence, and also "that the matters and things therein set forth are true, to the best of her knowledge and belief." It is hard to characterize this conduct of Rosenkrans, or, rather, it is hard to refrain from reprobating it as it deserves to be. It is more than strange that Rosenkrans should procure Mrs. Van Dien to subscribe an affidavit which was untrue in point of fact. He says he intended to draw a petition and annex the affidavit to it. This would have aggravated the matter. If he had done so, and had filed the petition he would have uttered and imposed upon the court a false affidavit. His conduct in this regard amounts to malpractice . . . it is enough for the purpose of this inquiry to say that Rosenkrans counseled and procured his client to subscribe and swear to an affidavit false in fact—a thing intolerable.

4. Such and such, and more corruptive, have been the practice of said Rosenkranses, as well as in the Paterson District Court as in the United States Court at Newark, New Jersey, in this cause ever since the year 1927-28. Their said motion is also false, because the Docket Entries certified by the Clerk of the Court show the defendant Harry Sussman out of District. On the hearing of the said present motion the defendant William V. Rosenkrans appeared and answered the call of the motion and theretofore applied to Mr. Charles Jaeckel, the Clerk of the Court, for permission to then and there operate the conspiracy as they had experts from Morristown, N. J., secretly present in the rear of the Court, and on Mr. Jaeckel's reluctance to allow him to practice such practice, he, the said William V. Rosenkrans, insisted thus: We are entitled under the rules. May it please the Court to see Mr. Charles Jaeckel,

Clerk of the Court below. The Court Stenographer, in order to cover Rosenkrans, did not transcribe the first hearing on said motion and that part of the conspiracy was never before this Court.

The civil liability of the said defendants is created by Federal Statutes. Title 8 U. S. C. A., Section 47, (R. S. Sec. 1980; and Title 15 U. S. C. A., Section 15; and is without respect to the amount in controversy, and is to recover threefold the damages which the plaintiff sustained. Title 18, U. S. C. A., Sec. 550. See United States v. Jacobson et al., District Court of the U. S. District of New Jersey, July, 1940, 34 Fed. Supp. 214. Forman, District Judge.

XX. ANY GENERAL DISTINCTION BETWEEN PERPETRATION AND PROCUREMENT NO LONGER OBTAINS. (* * * Clark, C. J. * * *.)

1. Yes. The Federal Statutes (R. S. Secs. 5323; 5427; Act of March 4, 1909, c. 321, Sec. 332, 35 Stat. 1152; Title 18, U. S. C. A. Sec. 550 (Criminal Code, Sec. 332); Title 15, U. S. C. A., Sec. 24; Title 8, U. S. C. A., Sec. 47) hold them responsible or answerable. See Davis, Clark, and Avis, J. J., In re: Callahan v. United States, 53 F. (2d) 467; Forman, D. J., In Re: United States v. Jacobson et al., 34 F. Supp. 214; and Sanborn, Van Devanter, Hook, and Adams, C. C. J., In Re: U. S. vs. Standard Oil Co., supra. In the said last case the Court says:

One who learns of a conspiracy after it is formed, and then joins it, or knowingly, aids in the execution of its scheme and share in its profits, becomes from that time as much a co-conspirator as if he were one of those who originally designed it and put it into operation. Citing: Lincoln v. Claflin, 7 Wall. 132, 138, 19 L Ed. 106; United

States v. Babcock, Fed. Cas. No. 14, 487; United States v. Cassidy (D. C.) 67 Fed. 698, 702; the Anarchists' case, 12 N. E. 865, 967, 17 N. E. 898, 122 Ill. 1, 2 Am. St. Rep. 320; United States v. Johnson, (C. C.) 26 Fed. 682, 684.

2. And In Re: State v. Fisher, Sup. Court of Nebraska, 174 N. W. R. 320, the Court says:

(6) If a member of the bar is aware of conspiracy of his client and others to obstruct justice and accomplish unlawful purposes in litigation in which he is employed as attorney, he should prevent such practice, if possible, and, if not should either expose such conspiracy or at least withdraw from the employment.

"An attorney is liable . . . where he and his client fraudulently conspire to do an illegal act, or where he acts dishonestly, with some sinister view, or for some improper purpose of his own which the law considers malicious."

Cooley on Torts. Joint Wrongs. Section 78. Citing: Farmer v. Crosby, 43 Minn. 459, 461, 45 N. W. 866, and see Roth v. Shupp, 94 Md. 55, 50 Atl. 430; Thomas Fruit Co. v. Livergood, 135 Okla. 105, 274 Pac. 417.

Where fraud or ultra vires is charged against them, the officers, directors and attorneys of a corporation are proper parties. Foster's Federal Practice, Sec. 111, p. 405. Citing: Geer v. Mathuson Alkali Works, 190 U. S. 428, 436, 47 L. Ed. 1122, 1126; Ervin v. Oregon Ry. & Nav. Co., 27 Fed. 625; Jones v. Missouri Edison Electric Co., 144 Fed. 76; United Cigarette Mach. Co. v. Winston C. Mach. Co., 194 Fed. 947; Ferguson v. Wilson, L. R. 2 Ch. App.

XXI. DOCTRINE OF RES JUDICATA.

(a) Please read in Point (f) on page 51 of the printed parts of the Record in this Court in the First Appeal.

(b) Please read in par. 5 on p. 57 to par. 6 on p. 59 of the printed parts of the Record in the first appeal.

(c) In stating the doctrine of res judicata, the courts frequently refer to the fact that the judgment sought to be used as a basis for the application of the doctrine was rendered without fraud or collusion. 30 Am. Jur., p. 941, Section 202. Citing: Riele v. Margolies, 279 U. S. 218, 73 L. Ed. 669, 49 S. Ct. 310; Cae v. Armour Fertilizer Works, 237 U. S. 413, 59 L. Ed. 1027, 35 S. Ct. 625; Howkins v. Glenn, 131 U. S. 319, 33 L. Ed. 184, 9 S. Ct. 739; Edmonds v. Clenn-Colusa Irreg. Dist. 217 Cal. 436, 19 P. (2d) 502, citing R. C. L.; Price v. Sixth Dist. Agre. Asso., 201 Cal. 502, 258 P. 387, citing R. C. L.; Riley v. Policemen's Pension Fund, 210 Iowa 449, 228 N. W. 578, citing R. C. L.; Carroll v. Fullerton, 215 Ky. 558, 286 S. W. 847, citing R. C. L.; Christopher v. Sisk, 133 Md. 48, 104 A. 355, citing R. C. L.; Wernwag v. Pawling, 5 Gill & J. (Md.) 500, 25 Am. Dec. 317; Skinner v. Argentina Twp., 238 Mich. 533, 213 N. W. 680, citing R. C. L.; Brenner v. Title Guarantee & T. Co., 276 N. Y. 230, 11 N. Ed. (2d) 890, 114 A. L. R. 1010; Dennis v. Pease, 61 N. D. 718, 240 N. W. 611, citing R. C. L.; Wright v. Schick, 134 Ohio St. 193, 16 N. E. (2d) 399 (and others).

d. Since it is generally held that the principles of res judicata may not be invoked to sustain fraud, (see 2 Freeman, Judgments, 5th ed. p. 1545, Sec. 731) and that a

judgment obtained by fraud or collusion may not be used as basis for the application of the doctrine of res judicata. New Orleans v. Gaines (New Orleans v. Whitney) 138 U. S. 595, 34 L. Ed. 1102, 11 S. Ct. 428; Welch v. Mandeville, 1 Wheat (U. S.) 233, 4 L. Ed. 79; Weil v. Defenbach, 36 Idah. 37, 208 P. 1025, citing R. C. L.; Ball v. Reece, 58 Kan. 614, 50 P. 875, 62 Am. St. Rep. 638; King v. Emmons 283 Mich. 116, 277 N. W. 851, 115 A. L. R. 564; (and other). (R. S. of New Jersey: 2:119-1-2.) (XIX. subds. 1, 2, 3, and 4 supra are repeated here.) See last line on p. 57, p. 58, and 3 paragraphs of p. 59 of the printed parts of the Record of Pleadings.

2. R. S. of New Jersey. 25:2-3. Conveyances, etc. and judgments and executions in fraud of creditors void as against persons defrauded. Every conveyance, . . . and every judgment and execution which have been or shall be contrived in fraud, covin or collusion, with intent to hinder, delay or defraud creditors and others of their lawful actions, debts, damages or demands, shall be deemed and taken (only as against those persons, their executors, administrators or assigns, whose actions, debts, damages or demands are or may be hindered or defeated by such covinous or fraudulent devices and practices) to be utterly void and of no effect, any feigned consideration, color or other pretence to the contrary notwithstanding. Source. Rep. 1877, p. 446, Sec. 12, (C. S. p. 2618, Sec. 12.) Cases collected. Floyd v. Floyd, 95 N. J. Eq. 661. Kalisch, J. on p. 665, 5th par.

What was said by Vice-Chancellor Van Fleet, in Doughty v. Doughty, 27 N. J. Eq. 315 (at p. 318), is repeated here. "And the power of the court to relieve against fraudulent judgments is not limited to judgments, recovered in the courts of the same state, but may be exerted against judg-

ments recovered in the courts of other states, whenever they are sought to be made the foundation of an action or defense''. Royal Organum v. Carley, 52 N. J. Eq. 642;

National Surety Co. v. Mulligan, 105 N. J. L. 336. Court of Errors and Appeals (at p. 341 2d par.) The only defenses that can be made . . . is that it was fraudulently procured, . . . Smith v. Swart, 103 N. J. L. 150. See also Simon v. Henke, 102 N. J. Eq. 115, (at p. 123, 5th par.) citing Commercial, &c. v. Hamilton, 99 N. J. Eq. 492; affirmed 101 N. J. Eq. 219; N. J. Ch. 1924; Judgment may be attacked for fraud by a suit in equity, Nugent v. Hayes, 125 A. 576, 96 N. J. Eq. 485; Equity will relieve against a judgment which was obtained by fraud. Dringer v. Erie Ry. Co., 8 A. 811, 42 N. J. Eq. 573, affirmed Dringer v. Jewett, 13 A. 664, 43 N. J. Eq. 701; Boulton v. Scott's Adm'rs. 3 N. J. Eq. 231; Tomkins v. Tomkins, 11 N. J. Eq. 512;

Judgments of courts of law are liable to be relieved against on account of fraud in their procurement, Boulton v. Scott's Adm'rs. 3 N. J. Eq. 231; Court of Equity will grant relief against judgment obtained by fraud against which court of law cannot afford adequate relief.—Simon v. Henke, 139 A. 887, 102 N. J. Eq. 115;

Conspiracy. Civil Liability. Van Horn v. Van Horn, 20 A. 485, 52 N. J. Law 284, 10 L. R. A. 184. Evidence of the fraud perpetrated. See the nine affidavits set out in pp. 63 to 70 of the printed parts of the Record.

XXII. INHIBITION.

(a) See page 3 of the Complaint. "Jurisdiction founded on the existence of several Federal questions and amount in controversy (b).

(b) The inhibition of the judiciary Acts of March 3, 1887, c. 373, 24 Stat. 552, and Aug. 13, 1888, c. 866, Sec. 1, 25 Stat. 433 (U. S. Comp. St. 1901, p. 508), that "no civil suit shall be brought before either of said courts (the Circuit Courts and District Courts) against any person by any original process or proceeding in any other district than that whereof he is an inhabitant," does not restrict the jurisdiction of the court, nor its power to bring in parties without its district, in the case under consideration, because that provision is inapplicable to instances in which exclusive jurisdiction over particular cases or classes of cases, is created and conferred upon the courts of the United States by special acts of Congress. Sanborn, Van Deventer, Hook, and Adams, in re: United States v. Standard Oil Co. supra. Citing: U. S. v. Mooney, 116 U. S. 106, 6 Sup. Ct. 304, 29 L. Ed. 550; Van Patten v. Chicago, Milwaukee & St. Paul R. C. (C. C.) 74 Fed. 981, 985-988; Atkin v. Disintegrating Co. 18 Wall. 272, 21 L. Ed. 841; In re: Louisville Underwriters, 134 U. S. 488, 493, 10 Sup. Ct. 221, 37 L. Ed. 1211.

There can therefore be no doubt that Congress had the authority to confer jurisdiction of this case upon the court below, nor that they have lawfully exercised that authority. Sanbron, C. J., supra.

See also: III. subds. 1 to 19 inclusive of this Brief.

XXIII. THE ENTRIES OF THE DEFAULTS.

1. Please see Application for Entry of Judgment, (etc.) pp. 51 to 56 inclusive of the typed Record of Pleadings as filed here in this Court.

2. AUTHORITIES IN SUPPORT OF PLEADINGS, THE ENTRIES OF DEFAULTS.

Defaulting party has lost his standing in Court. Clifton v. Tombs. See par. 5 of Mem. to general status of the case, p. ; 21 F. (2nd on p. 897. (3-4) When a party is in default and a bill taken pro confesso, while the court will give only such relief as is proper upon the bill, nevertheless the party himself has lost his standing in court, cannot appear in any way, cannot adduce any evidence, and cannot be heard at the final hearing. Frow v. Wooster. It is true that it is within the inherent power of the court to set aside a decree pro confesso (O'Brien v. Lashar (C. C. A. 2nd) 273 F. 520), and the court has that power also by equity rule. 5. But the party in default should show good cause before the default should be set aside. Furthermore Rule 17 provides that, when the bill is taken pro confesso, the court may proceed to a final decree at any time after the expiration of thirty days after the entry of the order pro confesso, and such decree shall be deemed absolute unless the court shall at the same term set aside the same or enlarge the time for filing the answer upon cause shown upon motion and affidavit; The plaintiff (defendants here in the case before the Court) made no motion to set aside the default or for leave to reply to the counter claim (complaint here). If he had made such motion and had shown some excuse for his failure to reply (plead or

answer here) . . . There is a strong and indeed strict, analogy in this respect between default in actions at law and proceedings upon bills pro confesso in equity. Thompson v. Wooster, 114 U. S. 104, 111, 5 S. Ct. 788, 29 L. Ed. 105; Central R. R. Co. v. Central Trust Co., 133 U. S. 83, 90, 10 S. Ct. 235, 33 L. Ed. 561.

3. A default is now a default, at law or in equity. The Annual Practice, 1911, p. 380 "Default in Pleading."

4. EFFECT OF TAKING THE BILL PRO CONFESSO—The effect of the order was summarized in the words "a decree pro confesso regards the statements of the bill as confessed." Thompson v. Wooster, 114 U. S. 104, 29 L. Ed. 107. In that case Mr. Justice Bradley said, "that to take a bill pro confesso is to order it to stand as if its statements were confessed to be true—a decree pro confesso is a decree based on such statements, assumed to be true, and . . . as binding and conclusive as any decree rendered in the most solemn manner," which cannot be impeached collaterally, but only upon a bill for review or a bill to set it aside for fraud.

5. STATUS OF THE DEFENDANT AFTER THE ORDER AND BEFORE THE DECREE—The order taking the bill pro confesso is in no sense a decree pro confesso, but the case indicates that the defendant no longer has a right to be heard as to the form and scope of the decree. He is not entitled to notice of the application for the decree. Austin v. Riley, 55 Fed. 833, 837; The defaulting defendant has merely lost his standing in Court. Mr. Justice Bradley, in Frow v. DeLa Vega, 15 Wall. 552, 21 L. Ed. 60.

"FILE ANSWER WITHIN SUCH TIME AS THE

COURT SHALL DIRECT." O'Brien v. Lashar, 273 Fed. Rep. 520 (C. C. A. 2).

6. The general effect of the entry of the default is that of the decree pro confesso of Equity Rule 16. The latter's effect has been stated: "When a party is in default and a bill taken pro confesso, while the court will give only such relief as is proper upon the bill, nevertheless the party himself has lost his standing in court, cannot appear in any way, cannot adduce any evidence and cannot be heard at the final hearing. Moore's Fed. Practice, p. 3165. Citing: Clifton v. Tombs (C. C. A. 4th) (1927), 15 Wall. 552, 554, 21 L. Ed. 60, and Thomson v. Wooster, 114 U. S. 104, 112, 113, 114, 5 S. Ct. 788, 29 L. Ed. 105, which supports the text; see also Austin v. Riley (C. C. S. D. Ia., 55 Fed. 833, 837; Interstate Commerce Commission v. Daley, No. 55 Dist. Ct., District of Massachusetts, F. 13, 1939. McLellan, Dist. J. This cause come on for a hearing today on the motion list upon the plaintiff's motion for judgment on the pleadings. . . . Under the circumstances the motion for judgment on the pleadings is not granted. But it would seem that a default may now be entered under rules of Civil Procedure for District Courts, Rule 55 (b) (2), 28 U. S. C. A. following section 723c upon application therefor by the plaintiff.

7. United States, for and in behalf of Federal Housing Administration v. Jackson, et al., 25 F. Supp. 79. District Court, Dist. of Oregon, Sept. 30, 1938. James Alger Fee, Dist. J. Application has been made in this case for the entry of the default of the defendant. From the record it appears that a judgment for affirmative relief is sought and the defendant has failed to plead or otherwise defend. Appropriate affidavit has been filed under Rule 55, Rules

of Civil Procedure, 28 U. S. C. A. following Section 723C, this default should be entered by the Clerk as of course without any application to the Court. However, since the Court has power to enter an order of default and Rule 55 is not a limitation thereof, the court grants the motion and enters the default.

In future cases, however, where the requirements set out in the rule are fulfilled, the Clerk will enter a default and no order will be entered by the court.

8. M Fed. Pr. 55-02. A judgment entered by default where the court has jurisdiction of the person (see Atchison, Topeka & Santa Fe Railway Co. v. Wells, 265 U. S. 101, 44 S. Ct. 469, 68 L. Ed. 928), and of the subject matter has the same effect as any other judgment on the merits. See Hefner v. North Western Mut. Life Ins. Co., 123 U. S. 747, 8 S. Ct. 337, 31 L. Ed. 313 . . . where the record supports the judgment, the defaulted party's remedy is to move the trial court to set aside the default judgment and permit him to plead.

9. Rose Collester, Appt. v. Interstate Fidelity Bldg. & Loan Association of Utah; Arizona Sup. Ct., December 7, 1937. 38 P. (2nd) 626; A. L. R. A. 98, page 1021. A default judgment admits as true all the material allegations properly set forth in the complaint, and is just as binding and conclusive as though it had been rendered after answer and contest. See R. C. L. title "Judgments," Sec. 461, 667, 669, and 987; Sodine v. Sodine, 94 Min. 301, 102 N. W. 861, 110 Am. St. Rep. 371; Tub City Min. & Mill. Co. v. Otterson, 16 Ariz. 305, 146 P. 203, 206, L. R. A. 1916E1; Last Chance Min. Co., et al. v. Tyler Min. Co., 157 U. S. 683, 15 S. Ct. 733, 39 L. Ed. 839.

10. 15 R. C. L. Judgments. Sec. 461. Conclusiveness of Default Judgments and Decrees Pro Confesso.—The rule as to conclusiveness of judgments applies to a judgment by default. Citing: 7 L. R. A. 578, and a judgment of the same court, or one of concurrent jurisdiction even if rendered by default, ordinarily operates as res judicata and may be pleaded in bar as an estoppel. When properly entered, it is conclusive and binding between the parties as to the matters litigated. Citing Tootle v. McClellan, & Indian Terr. 64, 103 S. W. 766, 12 L. R. A. (N. S.) 941.

11. Pleading and Practice in New Jersey—Revised Edition. Geo. S. Harris, 1939. Sec. 582. Judgment by Default.—Grounds for. Whenever defendant fails to comply with the rules of pleading he lays himself open to an entry of judgment by default. R. S. 1937, 2:27-191; Cumul. Suppl. to C. S. 163-290. Illustrations of cases wherein judgments by default have been entered against defendants are: when the defendant fails to file an answer to complaint within twenty days after the service of summons and complaint (R. S. 1937, 2:27-292; C. S. c094, Sec. 133; S. C. R. (1938) 76; See Sec. 390, Sec. 391 (upon failure of a party to plead according to the rules, a judgment of non-suit or judgment by default may be entered respectively by defendant or plaintiff. Sec. 391. Citations: Harris, Cont. Sec. 582. A rule for judgment by default may be entered by the plaintiff as of course, either in term or vacation without any special order of the court. R. S. 1937, 2:27-192; C. S. 4094, Sec. 100; See Sec. 391. Sec. 599. Affidavit for Setting Aside Judgment. Citations;

Kocher and Tryer, New Jersey Chancery Practice. Chapter VI. Decree Pro Confesso. Sec. 250. In General. When the time limited for the appearance of the defendant has expired, the complainant's solicitor will file the proofs ...

of service of notice or subpoena in the Clerk's Office, at the same time mailing to the Clerk a decree pro confesso against such of the adult defendants as have not answered. The decree will be entered by the Clerk without notice and of course. Dickinson's Ch. Pr. 34.

Moore's Fed. Pr., page 3159. A default judgment may be set aside in accordance with Rule 60 (b). Cases, procedure and citations.

12. The default of Dr. E. R. Murphy constitutes an admission to the effect that (a) he is the person named in the writ, and Declaration and intended to be sued; (b) and that the Court has acquired jurisdiction of his person and has jurisdiction of the cause of action; (c) the due execution of the contract to furnish medical and surgical services and operations, etc. See Sec. 42-1-50, set out on pp. 47-48 of Declaration. See the R. S. of Utah which appellant filed with his Record on Appeal in this Court; (d) the authority and capacity of the Utah Fuel Company to make the contract with its employees; (e) that he was a Vice Principal (R. S. S. of Utah, 49-6-1) of the defendant Utah Fuel Company and controlled companies and in complete charge and control of its medical system and hospital with the duty of controlling and conducting the transaction and property of the Utah Fuel Company.

That he had general supervision of the affairs pertaining to the medical system and its local hospital thereof with powers and authority to furnish prompt medical attention, hospitalization, operation, etc., as he generally did with all the other employees and their families; (g) that he took appellant out of his regular employment on the railroad washout construction and made him use his home as hospital and himself as man nurse; (h) that he falsely practiced medicine on the brother of the appellant for a

period of 40 days at Clear Creek, Utah; (i) and that the Utah Fuel Company paid appellant the wages per day which he was receiving at his said regular work. It follows that there is nothing left to be decided by the District Judge. Of Judicial Notice all the overt acts charged to the defendants have been committed to suppress the above stated crimes and others.

XXIV.

Judge Thomas Glynn Walker, in his refusal to consider the evidence set forth in the exhibits submitted to him, violated Article IV, Section 1 of the United States Constitution; And

Sections 41, 687, 688, and 695 of Title 28 U. S. C. A.

The perjuries committed by the respective parties in the District of Columbia and Third District Court of Salt Lake County, Utah, and the proceedings had thereon constitute Exhibit E in the first action against the Utah Fuel Company in the court below and in the present complaint the said Exhibit E is referred to in the last subdivision of par. 32 on page 27. Exhibit A of June, 1941. (See Memo. in the App. pp. 37a to 41a.) This said exhibit is also made a part of the present complaint. It follows that the statement of Judge Thomas Glynn Walker to the effect that the petitioner herein did not give notice according to Federal Rule 5 is not sustained by the facts on the record.

See also the Bill of Exceptions as filed with the Notice of Intention to Apply for a Writ of Mandamus; and Notice of Appeal.

The exhibits submitted and filed exhibit the havoc and

criminality practiced by the defendants, as well as those which they caused to be practiced or committed.

Hence, the court below denied to the plaintiff herein the equal benefits of all laws and proceedings and granted favors to persons unfit to be at large.

XXV. EFFECT OF REFUSAL TO APPLY AND CONSTRUE FOUR COUNTS OF THE COMPLAINT.

1. a. The refusal of the court below to consider the Third, Fourth, Fifth, and Sixth Counts of the Declaration constitutes a wrongful refusal to perform the functions of his office. Hughe's Federal Practice, Section 7232, and cases cited.

b. It is a Decision directly contrary to the law which leads the plaintiff to believe that Judge Walker acted against the law, and that he considered only his own will. Hughe's Federal Practice, Section 7232, on page 633, and cases cited; Freeman on Judgments, Sections 378, 386; The Record or Judgment Roll, Secs. 175 to 193. Le Clair v. Calls Him, 233 Pac. 1087, 1091, 106 Okl. 247. Rules of Civil Procedure, Rule 44, following Sec. 723c of Title 28, U. S. C. A.

(49 C. J.), p. 116. (Sec. 108). 3. Parts of Pleading Considerate.

2. A pleading must be construed as an entirety (Ryland v. Hollinger, 117 Fed. 216, 54 C. C. A. 248; Prescott, etc. R. Co. v. Atchison, etc. R. Co., 73 Fed. 438, numerous other cases follow here), including the caption (McCloskey v. Strickland, 7 Iowa 259), and a count must be considered

as a whole. Ruffin Coal, etc. Co. v. Rich, 241 Ala. 622, 108 S. 600; Alabama Power Co. v. Stogner, 208 Ala. 666, 95 S. 151; Louis Pizits Dry Goods Co. v. Cusiman, 206 Ala. 689, 91 S. 779; Louisville, etc. R. Co. v. Smith, 163 Ala. 141, 50 S. 241; Louisville, etc. v. Johnson, 162 Ala. 665, 5 S. 300; Morrison v. Clark, 14 Ala. A. 323, 70 S. 200, cer. denied Ex P. Morrison, 195 Atl. 696 Mem., 70 S. 1014 Mem.). Effect should be given to every part of the Pleading (Mildiken v. Thyson Comm. Co., 202 Mo. 637, 100 S. W. 604), and all parts will, if the language permit, be so construed as to be consistent with each other. Wagner v. Brady, 130 Tenn. 554, 171 S. W. 117; Derosia v. Farland, 86 Vt. 15, 83 A. 271.

All introductory allegations will be considered as applying, so far as necessary, in determining the facts alleged. Great Western Gold Co. v. Chambers, 155 Cal. 364, 101 P. 6.

XXVI. THE ORDERS ENTERED ON THE MEMORANDUM DECISION.

The orders setting aside the services of summonses are in the nature of a final judgment and are therefore immediately appealable. Pleading and Practice in New Jersey, Harris, Sec. 272, citing: Sweeney v. Miner, 88 N. J. L. 361, 96 A. 1014.

b. The judgment must be consistent with the pleadings, that is to say, the judgment must be responsive answer to the issues which were created by the pleadings. Cresci v. Ganely, 99 N. J. L. 417, 124 A. 68; Union Garage Co. v. Wilner, 98 N. J. L. 441, 120 A. 4; Warder v. Whitall, 1 N. J. L. 98.

c. The judgment must conform to the pleadings and the issues made thereby. (Goodreich Transit Co. v. City of Chicago, 4 F. (2nd) 636; St. Louis Merchants' Bridge Terminal Ry. Co. v. Schuerman, 237 F. 1 cer. de. 242 U. S. 652, 61 L. Ed. 546, 37 Sup. Ct. 246; Wagner Nat. Bank v. Welch, 164 Fed. 813) and the cause of action thereby asserted. Merill v. Rokes, 54 Fed. 450. Cyc. of Fed. Procedure, Vol. v. Sec. 1496.

d. SUPPORT IN RECORD, EVIDENCE OR FINDINGS.

A decree (or Order) of dismissal must be sustained by the record and proofs. Lindley v. Denver, 259 Fed. 83.

e. (31 Cyc.) p. 670. XIII. ISSUES, PROOF AND VARIANCE. See Judgments 23 Cyc. 816.

Issues are the questions in dispute between the parties to an action (Wolcott v. Wigton, 7 Ind. 44; New York, etc. Land Co. v. Votaaw, 16 Tex. Civ. App. 585; Barnes v. Dow, 59 Vt. 530, 10 Atl. 258; Hollister v. Young, 42 Vt. 403).

They may be issues of law or of fact. Schummacher v. Negberg, 96 Mo. App. 598, 70 S. W. 910. An issue of law ordinarily arises upon a demurrer (motion) McDermott v. Halleck, 65 Kan. 403, 69 Pac. 335. An issue of fact arises upon a denial of an allegation made by the opposite party. Burton v. Johnson, 2 Ind. 339.

f. 4. Evidence which tend to prove or disprove an issue presented by the pleadings should not be excluded. (31 Cyc.), 680. Leon v. Kerrison, 47 Fla. 178, 36 So. 173; Cane v. Lieberman, 103 N. Y. Supp. 728. See also Kelley v. McKenna, 18 Mich. 381.

(d) Several Counts or Defenses. (31 Cyc.) p. 683.

The same evidence may be available for more than one count or defense. Dayton v. Monrae, 47 Mich. 193, 10 S. W. 196. See also Rogers v. Mexico City Banking Co. Tex. Civ. App. 103 S. W. 461; p. 346 L. Where there are issues both of law and fact. Where issues of fact as well as law are raised, final judgment on disposing of the demurrer (motion) should not be rendered until the former are tried. State v. Crow, 11 Ark. 642; Clark v. Mutual Reserve L. Ins. Co. 23 App. Co. 546; Riley v. Loughrey, 22 Ill. 97; Bell v. Sheldon, 12 Ill. 372; Merreweather v. Gregory, 3 Ill. 50; Seits v. Sinel, 62 Ind. 253; Cook v. Brown, 6 Blackf. 220; Fitch v. Dun, 3 Blackf. 131; Paterson v. Salmon, 3 Blackf. 131; Hanna v. Ewing, 3 Blackf. 24, many other cases follow here.

XXVII.

A judgment (findings of fact and conclusions of law, or Order) void upon its face and requires only an inspection of the record to demonstrate its invalidity is a mere nullity, in legal effect no judgment (Order) at all, conferring no right and affording no justification. Freeman on Judgments, Vol. 1, Sec. 322, p. 643, citing: Voorhees v. Bank, 10 Pet. (U. S.) 475, 9 L. Ed. 501; Estate of Pusey, 180 Cal. 368, 181 Pac. 642, Forbes v. Hyde, 31 Cal. 342; Chicago, etc. R. R. Co. v. Summers, 113 Ind. 10, 3 Am. State Rep. 616, 14 N. E. 733; Cain v. Goda, 84 Ind. 209; Heisinger v. Modern Brotherhood of Am. 179 N. W. 161; Clay County Court v. Baker, 210 Mo. App. 63, 241 S. W. 447; Barnes v. Montana Lumber and Hardware Co., 216 Pac. 335; Henderson v. Daniels, 62 Mont. 363; Carron v. Martin, 26 N. J. L. 598.

XXVIII.

It is respectfully insisted that the Court below misconceived the laws of the United States determinative of the rights of the parties before it, committing error in the following respect:

1. In not peremptorily denying the defendants', Utah Fuel Co. et als., Motion and Special Appearance interposed to dismiss the Declaration or Complaint.

2. In refusing to consider the facts, laws, and parts of the Federal Rules of Civil Procedure interposed and set forth in answer to each and every defense interposed by the defendants, Utah Fuel Company, et als., in the Opposing Affidavit filed and submitted by the plaintiff-appellant in opposition to their said motion to dismiss the Complaint.

3. In refusing to consider plaintiff-appellant's Application for Commission to take Depositions and Examine Witnesses residing out of the United States and in the then Kingdom of Greece.

4. In not acting upon plaintiff-appellant's Motion and Application to take Deposition and Examine Parties and Witnesses residing out of State and in the State of Utah, at Salt Lake City, Utah; Utah County, Provo, Utah; and Carbon County, at Price, Utah.

5. In enjoining plaintiff-appellant from enforcing his rights to the entries of the defaults against eight (8) of the parties defendants.

6. In refusing to consider and give full force and effect to the Federal Rules of Civil Procedure for the District Courts of the United States as adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934, Ch. 651, particularly Rule 4 (d) (3).

7. In refusing to exercise and enforce or apply and construe the law found in Title 28, U. S. C. A. Sections:

(a) 729; (b) 725; (c) 103; (d) 371 (Judicial Code Section 256, amended); (e) 377 (Judicial Code, Sec. 262, amended); (f) 687; (g) 688; (h) 695; (i) Last sentence of subd. (l) of Section 41, of Title 28; also subdivisions: (2); (12); (14); (17); (23)). 28 U. S. C. A.;

In Title 15 U. S. C. A., Sections 1; 2; 4; 5; 15; 22; and 24. 15 U. S. C. A.;

In Title 8 U. S. C. A., Sections 41, 43, 47. 15 U. S. C. A.;

In Title 18 U. S. C. A., Sections 52; 54; 88; 231; 232; 237; 238; 242; 243; 244; 245; 550; and 571. 18 U. S. C. A.;

In refusing to exercise and enforce, or apply and construe: Article 1, Section 9; Article IV; Article (V); Article VIII; and Article XIV of the United States Constitution.

8. In sustaining the plea of res adjudicata of the conspirators Nicholas J. Pappas, Helen N. Pappas, William V. Rosenkrans, and Harry Sussman.

9. In permitting the conspirator William V. Rosenkrans to openly continue and operate before it the conspiracy set forth in the Declaration or Complaint.

10. In permitting William V. Rosenkrans and Addison P. Rosenkrans to continue and operate the conspiracy before it by sustaining their plea of res adjudicata even as

against the conspirator Harry Sussman who is and has been hiding to cover his co-conspirators, and by the United States Marshal certified "out of District", and as that he could not be and was not found within the district, and who has never been served with summons and copy of the complaint.

11. In exonerating the conspirator Harry Sussman notwithstanding the fact he could not be found within the district of New Jersey and who have had no standing in its said Court.

12. In exonerating the defendant H. Collin Minton, Jr., notwithstanding the fact that he openly appears for and in behalf of all the other conspirators and prosecutes the conspiracy set forth in the complaint with a thorough understanding of its criminality and objective.

13. In exonerating the conspirator Carol C. Johnson notwithstanding the fact that he filed his motion and never has had the nerve or face to appear before the Court and face the plaintiff-appellant.

14. In refusing to recognize the nature of the action which the plaintiff-appellant alleges under the Constitution and laws of the United States and treaties made under its authority; which Articles of the United States Constitution and Laws of the United States are clearly printed in paragraph (b) on page three (3) of the Complaint and all subsequent pleadings filed by the plaintiff-appellant. (3rd Par. on Ruling on Motion No. 1.)

15. In refusing to recognize the fact that jurisdiction also rests on the fact that the plaintiff-appellant is a

subject of a foreign country and the defendants in question are citizens of the United States, and of the State of New Jersey as to the defendants Nicholas J. Pappas, Helen N. Pappas, and William V. Rosenkrans; and of the State of New York as to the defendant Carol C. Johnson. These facts also appear on paragraph (a) in the caption on page 3 of the Complaint.

16. In refusing to recognize and consider, apply and construe the Third, Fourth, Fifth, and Sixth Counts of the Complaint and intentionally excluded them from his or its findings of fact and conclusions as set forth under its rulings on Motion No. 4.

17. In refusing to consider, or apply and construe the Sixth and Conspiracy Count clearly printed on pages 13 and 14 of the Printed Complaint; and have had left the same undetermined, unconsidered, and out of his said findings of fact and conclusions of law.

18. In refusing to consider plaintiff-appellant's affidavit and Exhibits by him submitted on his Motion No. 5; which Affidavit and Exhibits were properly submitted in open court on a regular Motion day and after Notice to the attorneys of Record and appearance by H. Collin Minton, Jr.

The plaintiff-appellant deems the entire record as filed by him in the Court of Appeals in the First Appeal had; and the Supplement Photostated and Typed Record as filed in the Court of Appeals in the case of Nicholas J. Curtis, Petitioner, vs. Hon. Thomas Glynn Walker, and Hon. William F. Smith, Respondents. Case No. 7929. Petition for Writ of Mandamus, Brief thereto, and Appendix thereof, to be necessary for the consideration of the contentions above enumerated.

XXIX. CONCLUSIONS.

1. The Order of the Court below Ordering, adjudging and decreeing that the service of summons on Carol C. Johnson is quashed should be reversed, set aside, and made null and void. (See it on pp. 23a-24a App.)

2. The Order issued, signed and entered on motion No. 1 on the twenty-eighth day of November, 1941, Ordering, adjudging and Decreeing that it does not have jurisdiction as to the defendants Nicholas J. Pappas, Helen N. Pappas, Harry Sussman, and William V. Rosenkrans, and directing that their motion to strike the complaint and quash the service of summons is granted as to each of them;

And further ordering, adjudging, and Decreeing that the plaintiff is attempting to try in said Court as to the said defendants a matter already adjudicated by a state court;

And further ordering that the Complaint be, and thereby is stricken and the service of summons be, and thereby is quashed as to said defendants, should be reversed, set aside, and made null and void.

3. That the ruling on motion No. 4, in so far granting the motion of the Utah Fuel Company, H. Collin Minton, Jr., et als., on the grounds (par's 8, and 9 of motion) that the twenty-third and twenty-fourth contain scandalous charges that the defendant-company conspired with H. Collin Minton, Jr., to maliciously renew and reopen the alleged persecution of the plaintiff, although as it appears from the allegations of the complaint, he, H. Collin Minton, Jr., appeared in behalf of the defendant-company in answer to a Complaint filed by this plaintiff; and that the twenty-fourth count also contains unrelated and scandalous allegations concerning the Courts and Officials of the United States, be reversed, set aside, and made null and void.

4. That the ruling on Motion No. 2 granting the motion of and quashing the service of summons on Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles R. Maybe, and William D. Sutton, should be reversed, set aside and made null and void.

5. The applications for the entries of the Defaults against the eight defendants in default should be granted and their defaults be entered according to law and federal rules of civil procedure.

6. The motion to substitute the Bamberger Coal Company and the default entered thereon should be granted and the default entered according to law.

7. The motion for leave to file second Supplemental Complaint should be granted and the 2nd supplemental complaint ordered filed.

8. The three motions to take Depositions of parties and witnesses residing in the State of Utah should be ordered granted.

The motion to take Deposition and examine witnesses residing in Greece should be granted, if conditions permit the procedure to take effect.

9. The motion for leave to submit the exhibits submitted to the Court below some of which are photostated and constitute the Record of the case in this Court should be granted;

Or,—in the alternative, provisions should be made and orders entered providing, ordering and directing that the service of summonses and complaint thus made upon the non-resident defendants be voided, and new and other and further services of summonses should be made according to the provisions of such and such orders; And

10. The general Order set out on pp. 27a to 34a of the Appendix has been submitted and up to the time the Brief has been turned over to the printers it was not signed; and if it be or be not signed and entered it should be set aside, reversed, and made null and void. And

11. This Court may grant such other and further relief in the cause as it may deem to be authorized by the circumstances, facts and laws, and the pleadings and exhibits making up the Record of the cause or case before this Court; and as it may deem just and proper.

Respectfully submitted,

NICHOLAS J. CURTIS, LL. B.,
Plaintiff-Appellant Appearing in Person,
P. O. Box 972,
Trenton, New Jersey.

MINTON & ROGERS,
H. COLLIN MINTON, JR.,
Attorney for Himself and the Defendants, Utah Fuel Company, et als.,
Trenton Trust Bldg.,
Trenton, N. J.

ROSENKRANS & ROSENKRANS,
Lawyers,
5 Colt Street,
Paterson, New Jersey.

CAROL C. JOHNSON *cannot be found and his associates refused to accept service of papers sent to them.*

APPENDIX

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE THIRD CIRCUIT.

No. 8027.

NICHOLAS J. CURTIS,
Appellant,
vs.
UTAH FUEL COMPANY, et al.

Coram: Biggs and Maris, JJ.

Upon consideration of appellant's application,

It is ORDERED that the time for filing appellant's brief in the above entitled case be, and the same is hereby extended to August 1, 1942.

By the Court,

MARIS,

Circuit Judge.

May 29, 1942.

Statutes and Authorities

Practice. Rule 27. 2. (f) of the Rules of Practice and procedure of the United States Supreme Court.

The statutes and authorities are long.

N. J. Curtis, Plaintiff.

Article 1, Section 9. The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it;

Article IV. of the Art. in Addition to and Amendment of the Constitution.

The rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seisures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

Article (V) . . . nor be deprived of life, liberty, or property without due process of law.

. . .; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE (VIII). Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. See the certified Record of the plot as certified by the Clerk of Salt Lake County, Utah.

Article XIV. Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person the equal protection of the laws.

See the facts as stated in the Complaint. And particularly the criminality of the defendants as certified and submitted to the court below, in the exhibits submitted.

The Acts of Congress invoked by plaintiff. See citations on page three of the Complaint.

Title 8, U. S. C. A., Section 41. Equal rights under the law.—All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishments, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. (R. S. Sec. 1977.)

Section 43. Civil Action for deprivation of rights.—Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. (R. S. Sec. 1979.)

Section 47. Conspiracies;

Please see the Section in the Code. Too long to copy it. . . .; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to

be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. (R. S. Sec. 1980.)

Title 15, U. S. C. A., Sec. 1.—Trusts, etc. in restraint of trade illegal; penalty.—Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. . . .

Section 3. Trusts in Territories of District of Columbia illegal; penalty.—Combination a misdemeanor. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is declared illegal.

Section 4. Jurisdiction of Courts, procedure.

The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7, inclusive, or section 15 of this chapter. July 2, 1890, c. 647, Sec. 4, 26 Stat. 209; Mar. 3, 1911, c. 231, Sec. 291, 36 Stat. 1167.

Section 5. Bringing in Additional parties.

Whenever it shall appear to the court before which any proceeding under section 4 of this chapter may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof. (July 2, 1890, c. 647, Sec. 5, 26 Stat. 210.)

Section 15.

Any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefore in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fees. (Oct. 15, 1914, c. 323, Sec. 4, 38 Stat. 731.)

Section 24. Liability of directors and agents of corporations.

Whenever a corporation shall violate any of the penal provisions of the anti-trust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, . . . (Oct. 15, 1914, c. 323, Sec. 14, 38 Stat. 736.)

Title 28, U. S. C. A., Section 41. Subdivisions (1) c, (8), (12), (14), (17), (23);

Chapter 4. Section 103. When any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein. R. S., Sec. 731; Mar. 3, 1911, c. 231, Section 42. . . .)

Section 725. Laws of States as rules of decisions.— The laws of the several States, except where the Constitution treaties, or Statutes of the United States otherwise require or provide, shall be regarded as rules of decisions in trials at common law, in the courts of the United States, in cases where they apply. (R. S. Sec. 721.)

Section 729.

See the Section as set out in full on pp. 8-9 of the printed parts of the Record in this Court.

In the operation of the conspiracy alleged in the Complaint and the two supplementals filed, the defendants in the suit violated also the following Sections of Title 18, U. S. C. A. Section 52. (Criminal Code, Section 20.)

Depriving citizen of civil rights under color of State Laws. Whoever, under color of any law, or custom, willfully subjects, or causes to be subjected, any inhabitant of any State, Territory, or District to the deprivation of any right, privileges, or immunities secured or protected by the Constitution and laws of the United States, or to

different punishments, pains, or penalties, on account of such an inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000, or imprisoned not more than one year, or both. (R. S. Sec. 5510; Mar. 4, 1907, c. 321, Sec. 20, 35 Stat. 1092.)

Section 54. Conspiracy under the Statute defined.—A conspiracy is the corrupt agreeing together of two or more persons to do, by concerted action, something unlawful, either as a means or an end. The word "corrupt" in the sense used, means "unlawful." U. S. v. Johnson, 26 F. 682.

Section 54. (Criminal Code, Section 21.) Conspiring to prevent officer from performing duties. If two or more persons in any State, Territory, or District conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, Territory, District, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties, each of such persons shall be fined not more than $5,000, or imprisoned not more than six years, or both. (R. S. Sec. 5518; Mar. 4, 1909, c. 321, Sec. 21, 25 Stat. 1092.)

Section 88. Conspiring to commit offense against United States.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United

States in any manner or for any purpose, and one or more of such parties do any act to effect the object of such conspiracy, each of the parties to such conspiracy shall be fined not more than $10,000, or imprisoned not more than two years, or both. (R. S. Sec. 5440; May 17, 1879, c. 8, 21 Stat 4; Mar. 4, 1907, c. 321, Sec. 37, 35 Stat. 1096.)

The Statute includes any conspiracy for purpose of impairing, obstructing or defeating lawful function of any department of the Federal Government, and it is not essential that the conspiracy contemplate or result in financial loss to government. Langer v. U. S. (C. C. A., N. D., 1935), 76 Fed. (2nd) 817. The statute is to be strictly construed. Rorres v. Swope, 25 Fed. Supp. 483.

The Articles of the Constitution, Sections of the Code of Laws of the United States, and "Notes" set out herein and above and below are not intended to tire the Court out, it has to be done in order to show that the suit is one within the inhibition of the law found in Section 103 of Title 28.

NOTE 46. One who aids or abets a conspiracy after its formation, with understanding of its purpose, becomes a party to it. Burkhardt v. United States, 13 Fed. (2nd) 841.

One who, with knowledge of conspiracy, aids in carrying out the unlawful design, is equally guilty with conspirators. Simpson v. United States, 11 F. (2nd) 592, certiorari denied, 46 S. Ct. 488, 271 U. S. 674, 70 L. Ed. 1145.

NOTE 47. It is immaterial at what time a defendant joined a criminal conspiracy, where it is shown that he joined with others in carrying out the common design. United States', 253 F. 212, affirmed Schenck v. U. S., 39 S. Ct. 247, 249 U. S. 47, 63 L. Ed. 470.

One joining a conspiracy, after its formation, by con-

tributing to its carrying out with knowledge thereof, is liable under this section. Rudner v. U. S., 281 F. 516, certiorari denied, 43 S. Ct. 95, 260 U. S. 734, 67 L. Ed. 487.

Any one who, after a conspiracy is formed, and who knows of its existence, joins therein, becomes a party thereto from that time, Hagen v. United States, 268 F. 344; United States v. Cassidy, citing U. S. v. Babcock, Fed. Case No. 14, 487; U. S. v. Barrett, 65 F. 62; U. S. v. Howell, 56 F. 21; U. S. v. Sacia (D. C. N. J. 1880), 2 F. 754.

One who comes into a conspiracy after it has been formed, with knowledge of its existence, and with a purpose of forwarding its design, is equally as guilty as though he had participated in its original formation. Nyquist v. U. S., 2 F. (2d) 504, certiorari denied, 45 S. Ct. 508, 267 U. S. 606, 69 L. Ed. 810; Thomas v. U. S., 156 F. 897, 84 C. C. A. 477, 17 L. R. A. (N. S.) 720.

All who participated in unlawful acts committed in furtherance of a conspiracy are equally liable as co-conspirators, regardless of whether they were original parties to the conspiracy or not. Calcutt v. Gerrig (C. C. A. Tenn. 1921), 271 F. 220.

NOTE 49. Where the existence of an unlawful conspiracy is proved, an overt act by one of the parties thereto becomes the act of all, and they are all alike guilty. Jung Quey v. U. S., 222 F. 766; U. S. v. Noblom, Fed. Cas. No. 15,896; U. S. v. Butler, Fed. Case No. 14,700; Hamburg American Steam Packet Co. v. U. S., 250 F. 747, Certiorari denied; U. S. v. Bergdoll, 27 F. 498, writ of error dismissed; Bergdoll v. U. S., 27 F. 404, and certiorari denied, 42 S. Ct. 589, 259 U. S. 585, 66 L. Ed. 1076; Grayson v. U. S., 272 F. 553, certiorari denied, 42 S. Ct. 49, 257 U. S. 637, 66 L. Ed. 409; Vannata v. U. S., 289 F. 37; Chew v. U. S., 9 F. (2d) 348.

NOTE 151. A conspiracy to corruptly obstruct and impede the due administration of justice in a court of the United States in a civil action between private parties in violation of R. S. Sec. 5399 (embodied in Section 241 of this title), was a conspiracy to commit an offense against the United States within the meaning of R. S. Sec. 5440, embodied herein, Wilder v. U. S., 143 F. 433, 74 C. C. A. 567, writ of certiorari denied, 27 S. Ct. 787, 204 U. S. 674, 51 L. Ed. 674.

A conspiracy could be formed to procure United States attorney (Judge) to dismiss prosecution. Felder v. United States, 9 F. (2d) 872, certiorari denied, 46 S. Ct. 348, 270 U. S. 648, 7 L. Ed. 779.

NOTE 153. Perjury and subornation.—Perjury in violation of Code of District of Columbia, see note 134 under this section (A crime against United States is committed. . . .) Fletcher v. U. S., 42 App. D. C. 53, 511; citing U. S. v. Colla, 37 App. D. C. 432.

NOTE 157.—Use of mails to defraud.—The use of mails in a scheme to defraud is made a crime by Section 338 of this title, and it is the depositing in or the taking out of a letter pursuant to such scheme that constitutes the offense, and a conspiracy to commit the offense is a confederating together of two or more persons to carry out a scheme of that kind in that way. Marrin v. U. S., 167 F. 951, 93 C. C. A. 351, certiorari denied, 32 S. Ct. 523, 223 U. S. 719, 56 L. Ed. 629.

NOTE 201. Jurisdiction and Venue.—

NOTE 203. Place where overt act committed.

NOTE 210. Last Overt Act as controlling (the limitation).

NOTE 201. Jurisdiction and Venue.—In general.—Where an indictment charges a conspiracy formed in each of two federal districts to commit a crime and overt acts committed in each district, it is not essential to jurisdiction in one district that all defendants should have participated in overt acts in that district, but it is sufficient if some of them did. Rudner v. U. S., 281 F. 516, certiorari denied, 43 S. Ct. 95, 200 U. S. 737, 67 L. Ed. 487. See also Ireland v. Henkle, 179 F. 993; Daeck v. U. S., 25 F. 566; Grayson v. U. S., 272 F. 553, cer. d. 42 S. Ct. 49, 257 U. S. 637, 66 L. Ed. 409.

Where some of the defendants, charged with criminal conspiracy in restraint of interstate commerce in violation of anti-trust Act, Sec. 1 (Section 1 of Title 15, Commerce and Trade), were corporations of other States, but the conspiracy was in part carried on within a district, and one of the defendants were inhabitant of district and found there the court of that district had jurisdiction. United States v. National Malleable & Steel Casting Co., 6 F. (2d) 40.

NOTE 202. A conspiracy to do an unlawful act, formed in one district, and in part executed there, is punishable in that district, though it was consummated in other parts of the United States. U. S. v. Noblom, Fed. Cas. No. 15, 896. See also U. S. v. Howell, 56 F. 21.

NOTE 203.—Place where overt act committed.—A prosecution for conspiracy under this section may be maintained in any federal district where an overt act in furtherance of the conspiracy is committed. Morris v. U. S., 7 F.

(2d) 785, certiorari denied, 46 S. Ct. 205, 270 U. S. 640, 70 L. Ed. 775; Hyde v. U. S., 225 U. S. 347, 32 S. Ct. 793, 56 L. Ed. 1114; Wing v. U. S., 280 F. 112; Tillinghas v. Richards, 225 F. 105, 96 C. C. A. 307; U. S. v. Rindsopf, 6 Biss. 259, 27 Fed. Cas. No. 16, 165.

The venue of conspiracy may be laid wherever an overt act is committed, under this section as well as at common law, though some of the indicted defendants were never in that district. Easterday v. McCarthy, 256 F. 651, affirmed U. S. v. McCarthy.

A prosecution for conspiracy to impede administration of justice under this section is properly brought against all conspirators in the division and district where the overt act is performed, regardless of the place where the conspiracy was formed. Harrington v. U. S., 267 F. 97.

NOTE 207. Limitations.—In general.—

NOTE 208. Time from which statute runs in general.—A conspiracy continues, so far as the Statute of Limitations is concerned, so long as there is a course of conduct in violation of law to effect its purpose. Ryan v. U. S., 216 F. 13, 132 C. C. A. 257, cer. d. Id., 34 S. Ct. 603, 232 U. S. 726, 58 L. Ed. 816.

NOTE 209.—Overt Acts as controlling in general.—Any act in execution of the original plan may be regarded as a renewal of the original combination, and may be prosecuted against any one participating, personally or through others. U. S. v. Reddin.

Title 18, Sec. 231. (Criminal Code, Sec. 125.) Perjury.—Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered,

that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, shall willfully and contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than $2,000, and imprisoned not more than five years. (R. S. Sec. 5392; Mar. 4, 1909, c. 321, Sec. 125, 35 Stat. 1111.)

Section 232. (Criminal Code, Section 126.) Subornation of perjury.—Whoever shall procure another to commit any perjury is guilty of subornation of perjury, and punishable as in Section 231 of this title prescribed. (R. S. Sec. 5393; Mar. 4, 1909, c. 321, Section 126, 35 Stat. 1111.)

Section 237. Whoever, directly or indirectly give or offer, or cause to be given or offered, any money, property, or value of any kind, or any promise or agreement therefore, or any other bribe, to any judge, judicial officer, or other person authorized by any law of the United States to hear or determine any question, matter, cause, proceeding, or controversy, with intent to influence his action, vote, opinion, or decision, shall be fined not more than $20,000, or imprisoned not more than fifteen years, or both; and shall forever be disqualified to hold any office of honor, trust, or profit under the United States. (R. S. Sec. 5449; Mar. 4, 1909, c. 321, 25 Stat. 1112.)

Petitioner's Memo. Please see page 14 of the Record of Pleadings in the first Appeal of the case, pages 33-34 of the Complaint.

On the Return Day of their Motion to Dismiss my first Complaint in the court below against the defendant Utah Fuel Company, on the 11th day of December, 1937, in the presence of: Hon. Phillip Forman, Judge, sitting as a Court for the Hearing of Motions; 2. Hon. Charles S. Chevrier, and Benjamin F. Haven, Deputy Clerks of

the Court below; Two Deputy Marshals attending the Court; and 5. One or two attorneys, the defendant H. Collin Minton, Jr., argued to Judge Phillip Forman as follows: Please see the Parts of the argument on the pages cited above here.) William H. Folland is a justice of the State Supreme Court of the State of Utah and the proceeding would be against that Judge. Judge Phillip Forman.

They put him there for putting him (pointing your petitioner) out of the way.

H. Collin Minton, Jr. Yes, they do that. They do those things. They will do the same thing with you. Dismiss his case and put him in. They will not stand to see him back. . . .

Judge Phillip Forman. I refuse to sustain you. Just now you said that they put him there for putting him out of the way and now you are asking me to put him in. I refuse to sustain you. We cannot put him in. We have papers here, and we cannot put him in. He is the best customer here.

H. Collin Minton, Jr. I just tell you these because I know you. Etc.

Section 242. (Criminal Code, Sec. 136.)

Conspiring to intimidate party, witness, or juror.—If two or more persons conspire to deter by force, intimidation, or threat any party or witness in any court of the United States, or in any examination before a United States Commissioner or officer acting as such commissioner, from attending such court or examination, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified,

. . . each of such persons shall be fined not more than $5,000, or imprisoned not more than six years, or both. (R. S. Sec. 5406; Mar. 4, 1909, c. 321, Section 136, 35 Stat. 1113.) From U. S. C. A. 1925.

Section 338. (Criminal Code, Sec. 215.)

Using mails to promote frauds; Counterfeit money. Whoever having devised, or intending to devise any scheme or artifice to defraud, . . . (R. S. Sec. 5480; Mar. 2, 1889, c. 393, Sec. 1, 25 Stat. 873; Mar. 4, 1909, c. 321, Sec. 215, 35 Stat. 1130.)

Section 443. Kidnaping. Please see the section.

Sections 444 and 445. Holding or Returning Persons to Peonage; and same, obstructing enforcement of law. Please see 2nd Supp. Complaint.

Section 550. (Criminal Code, Section 332.)

"Principals" defined. Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission is a principal. (R. S. Secs. 5323, 5427; Mar. 4, 1909, c. 321, Sec. 332, 35 Stat. 1152.)

Title 28, Ch. 10, Section 371. (Judicial Code, Section 256, amended.)

Exclusive Jurisdiction of United States Courts.

The jurisdiction vested in the courts of the United States in the cases and proceedings hereinafter mentioned, shall be exclusive of the courts of the several States.

First. Of all crimes and offenses cognizable under the authority of the United States. Please see the section.

Title 18, U. S. C. A. Sec. 408. . . . Whoever shall receive, conceal, store, barter, sell, or dispose of any motor vehicle, moving as, or which is a part of, or which constitutes interstate or foreign commerce, knowing the same to have been stolen, shall be punished by a fine of not more than $5,000, or by imprisonment of not more than five years, or both. (Oct. 29, 1919, c. 89, Secs. 1 to 5, 41 Stat. 324.)

These being the facts and the laws in the case under consideration, the law found in the Act of Congress of Mar. 3, 1911, c. 231, Sec. 42, 36 Stat. 1100; Section 103, U. S. C. A. is the most suitable law of the United States to carry into effect the jurisdiction of the Court below. (R. S. Sec. 722.) The statute (103, U. S. C. A., Title 28) is mandatory. Statutes are mandatory, except for the established rules for their interpretation. Suydam v. Broadnu, 14 Pet. 677.

MEMORANDUM.

UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

NICHOLAS J. CURTIS,
Plaintiff,
vs.
UTAH FUEL COMPANY, a corporation, et als.,
Defendants.

Memorandum.
Civil No. 728.

APPEARANCES:

NICHOLAS J. CURTIS, ESQ., Attorney pro se.

ADDISON P. ROSENKRANS, ESQ., Attorney for Defendants, Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans.

MESSRS. MINTON & ROGERS, BY: H. COLLIN MINTON, JR., ESQ., Attorneys for Defendants, Utah Fuel Company, Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Maybe (Charles R. Mabey), W. D. Sutton.

CAROL C. JOHNSON, ESQ., Attorney pro se.

WALKER, District Judge:

Memorandum

MOTION NO. 1.

The motion of the defendants, Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans is for an order striking the complaint filed by the plaintiff and it is for an order quashing the summons issued thereon.

RULING.

The complaint which the plaintiff entitles "Declaration" states that Nicholas J. Curtis is a citizen and subject of the Kingdom of Greece, and a resident of Ridgewood, Bergen County, New Jersey, that the matter in controversy exceeds, exclusive of interest and costs the sum of $3,000.00, and "Jurisdiction founded on existence of several federal questions and amount in controversy."

The second, twenty-first and twenty-second counts name the aforesaid defendants and relate to money due and owing for work, labor and services performed.

It is difficult to determine from a reading of the complaint, the nature of the action which the plaintiff attempts to allege, but whether or not jurisdiction arises under the Constitution or laws of the United States or treaties made, or which shall be made under their authority[1] or rests on the fact that the plaintiff is a subject of a foreign country and the defendants in questions are citizens of the State of New Jersey[2], the amount in controversy must exceed, exclusive of interest and costs, the sum or value of $3,000.00.

The counts hereinbefore referred to contain specific allegations as to the amount in controversy and said

---

[1] Title 28, U. S. C. A., Section 41, Subdivision 1(a).
[2] Title 28 U. S. C. A., Section 41, Subdivision 1(c).

specific allegations limit the general allegations which appear in other parts of the complaint and establish the sum of $347.92, exclusive of interest and costs as the amount in controversy between the plaintiff and the defendants, NICHOLAS J. PAPPAS, HELEN N. PAPPAS, HARRY SUSSMAN and WILLIAM V. ROSENKRANS. Therefore: this court does not have jurisdiction as to said defendants, and their motion to strike the complaint and to quash the service of summonses is granted as to each of them. In fact, no matter how we struggle with the complaint there seems to be no conceivable reason why William V. Rosenkrans is made a party defendant.

The court could also grant the relief requested by the defendants, NICHOLAS J. PAPPAS, HELEN N. PAPPAS and HARRY SUSSMAN on another ground; the plaintiff is attempting to try in this court as to them a matter already adjudicated by a state court.

MOTION NO. 2.

The defendants, DR. FREDERICK DUNN, DR. A. C. CALLISTER, DR. E. D. SMITH, CHARLES E. MAYBE (CHARLES R. MABEY) and WILLIAM D. SUTTON move to quash service of the summonses made upon them. The record shows that they were served by Gilbert Mecham, United States Marshal for the District of Utah at Salt Lake City, Utah, with the exception of Dr. Frederick Dunn, who was served at Springfield, Utah.

RULING.

Except as provided in Sections 113 to 118 of Title 28 U. S. C. A.[1], no civil suit shall be brought in any district

[1] Exceptions do not apply.

court against any person by any civil process or proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suits shall be brought only in the district of the residence of either the plaintiff or the defendant[2].

The first provision has been violated because the plaintiff has attempted to bring the action in question in the district (New Jersey) where he says he resides, and the second provision has been violated because where jurisdiction rests on diverse state citizenship only, the suit instituted in the residence of the plaintiff can effect nothing unless he is able *there* to secure the service of process on the defendants.

The motion is granted and service of summons on DR. FREDERICK DUNN, DR. A. C. CALLISTER, DR. E. D. SMITH, CHARLES E. MAYBE (CHARLES R. MABEY) and WILLIAM D. SUTTON is quashed.

MOTION NO. 3.

The defendant, Carol C. Johnson, a citizen and resident of New York moves to quash service of the summons made upon him. The record shows that he is a citizen of the State of New York and he was served by Leo Lowenthal, United States Marshal for the Southern District of New York.

RULING.

Except as provided in Sections 115 to 118 of Title 28 U. S. C. A.[1] no civil suit shall be brought in any district

[2] Title 28, U. S. C. A. 112.

[1] Exceptions do not apply.

court against any person by any civil process or proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suits shall be brought only in the *district of the residence of either the plaintiff or the defendant*[2].

The first provision has been violated because the plaintiff has attempted to bring the action in question in the district (New Jersey) where he says he resides, and the second provision has been violated because where jurisdiction rests on diverse state citizenship only, the suit instituted in the residence of the plaintiff can effect nothing unless he is able *there* to secure the service of process on the defendant.

The motion is granted and service of summons on CAROL C. JOHNSON is quashed.

MOTION NO. 4.

Utah Fuel Company moves to strike the complaint on the grounds more particularly set forth in its notice of motion.

Motion Addressed To:	*Ruling*
1st Count	Denied.
2nd Count	Granted.
Paragraphs 36 to 39, inclusive, Counts 21 and 22	Granted.
7th Count	Denied.
8th Count	Denied.
9th Count	Denied.
10th Count	Denied.
11th Count	Denied.
12th Count	Denied.

[2] Title 28, U. S. C. A. 112.

Memorandum

13th Count	Denied.
14th Count	Denied.
15th Count	Denied.
16th Count	Denied.
17th Count	Denied.
18th Count	Denied.
19th Count	Denied.
20th Count	Denied.
23rd Count	Granted.
24th Count	Granted.
25th Count	Denied.

MOTION NO. 5.

The plaintiff moved to submit affidavits and exhibits in opposition to the motion to dismiss. The court however, was unable to consider same because the plaintiff did not give notice of said motion as required by the Rules[1].

The necessary orders should be presented.

---

[1] Rule 5, Federal Rules of Civil Procedure.

ORDER.

UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

NICHOLAS J. CURTIS,
Plaintiff,
vs.
UTAH FUEL COMPANY, a corporation, et als.,
Defendants.
} Civil No. 728.

SIR:

PLEASE TAKE NOTICE, that the within is a true copy of an order duly made, entered and filed in the office of the Clerk of the above-named Court on the 25th day of November, 1941.

Dated: November 29, 1941.

Yours, etc.,
CAROL C. JOHNSON, per se,
Office and P. O. Address,
68 William Street,
Borough of Manhattan,
City of New York.

TO:

NICHOLAS J. CURTIS, Plaintiff,
Appearing in Person,
106 Mansion Street,
Poughkeepsie, N. Y.

ORDER.

UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

NICHOLAS J. CURTIS,
Plaintiff,
vs.
UTAH FUEL COMPANY, a corporation, et als.,
Defendants.

Civil No. 728.

Upon all the pleadings and proceedings heretofore had herein and upon the motion of Carol C. Johnson for an order to quash service of summons made upon him.

NOW, therefore, it is on this 25th day of November, 1941

ORDERED, ADJUDGED and DECREED that service of summons on Carol C. Johnson is quashed.

THOMAS GLYNN WALKER,
United States District Judge,
District of New Jersey.

ORDER.

UNITED STATES DISTRICT COURT.

DISTRICT OF NEW JERSEY.

NICHOLAS J. CURTIS, Plaintiff, vs. UTAH FUEL C'MPANY, a corporation, et als., Defendants.	Civil Action File No. 728. Action at Law. On Motion to Strike Complaint and Quash Summons.

Application having been made on behalf of the defendants, Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans, to strike the complaint and quash the summons filed and served in the above entitled matter, so far as they are concerned, and the same having come on to be heard before Hon. Thomas G. Walker, Judge of United States District Court for the District of New Jersey, and argument having been made thereon, by Nicholas J. Curtis, appearing for himself, and by the attorney of said defendants in their behalf, and the Court having duly considered the same and being of the opinion that the Court does not have jurisdiction as to said defendants under the allegations of plaintiff's Complaint, and of the further opinion that the plaintiff is attempting to try in this court, so far as said defendants are concerned, a matter already adjudicated by a state court, and

that the motion to strike the Complaint, so far as said defendants are concerned, and to quash the service of summons on them should be granted to each of them:

It is on this twenty-eighth day of November, 1941, ORDERED that the complaint be, and hereby is, stricken, and the service of summons be, and hereby is quashed, as to said defendants, Nicholas J. Pappas, Helen N. Pappas, Harry Sussman, and William V. Rosenkrans.

On motion of Addison P. Rosenkrans.

THOMAS G. WALKER.

ADDISON P. ROSENKRANS,
Attorney of Defendants, Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans.

DOCKET ENTRIES.

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY,

TRENTON, NEW JERSEY.

NICHOLAS J. CURTIS,
Plaintiff,
against
UTAH FUEL COMPANY, et als.,
Defendants.

Civil No. 729.

The issues in this action having been duly brought to hearing before Hon. Thomas Glynn Walker, United States District Judge, at terms of this court held at the United States District Court, District of New Jersey, in Court Room No. 1, of the Division of said Court, at the Court House at the City of Newark, and State of New Jersey, as to the pleadings, Complaint, and Motion papers enumerated here—under as to the Motions heard before Judge Walker:

DOCKET ENTRIES.

Jan. 12, 1940. Complaint with supplement annexed thereto filed.

Docket Entries

Mar. 25, 1940. Summons issued (26 copies).

Apr. 16, 1940. Summons returned served on Utah Fuel Co. by serving its attorney on April 3rd, on Utah Fuel Co. by serving Vice President, on Mrs. Helen N. Pappas and Nicholas Pappas and William V. Rosenkrans personally April 6th, Harry Sussman, out of Dist. Sotirios Nicholaidis, "deceased" filed.

Apr. 17, 1940. Notice of Motion to Strike Complaint and Quash Summons re Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans, filed.

Apr. 17, 1940. Affidavit of Service of Notice, filed.

Apr. 22, 1940. Summons Returned served on Dr. R. E. Murphy on April 8th, on W. D. Sutton, Mark Tuttal, Wm. H. Folland by serving wife; on Dr. D. E. Smith and D. O. Larson on April 9th, on Dr. Frederick Dunn, on April 11th, Dr. Samuel Wolf, Joseph Ririe and Simon Bamberger, deceased, Dr. J. C. Pauland Dr. Arthur Taylor, unknown, filed.

Apr. 22, 1940. Summons returned served on Chas. W. Kutz, personally April 6th, Louis Brownlow "not found," and Dr. Hickling, deceased, Wm. H. Fay and William J. Hazen not found, filed.

Apr. 22, 1940. Summons returned served on Carol C. Johnson, April 8th, filed.

Apr. 22, 1940. Hearing on motion to Strike Complaint and quash service of summons as to Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans, Decision Reserved. Plff. submitted his part on his Opposing (Walker) Affidavit, filed and served Apr. 18, 1940.

April 23, 1940. Opposing Affidavit Opposing the Motion to

Vacate and Set Aside the Service of Summons Herein Filed by Carol C. Johnson, Defendant, filed and Served Personally.

Apr. 24, 1940. Special appearance and Notice re Utah Fuel Co. and H. Collin Minton, Jr., filed.

Apr. 24, 1940. Notice of Motion for Order Striking Complaint as to Utah Fuel Company and H. Collin Minton, Jr., filed.

Apr. 25, 1940. Notice of Motion for Order vacating and setting aside service as to Carol C. Johnson, filed.

Apr. 26, 1940. Opposing Affidavit Directed Against the Motion to Strike the Complaint herein Filed by the Defendants, H. Collin Minton, Jr., and Utah Fuel Company, filed.

Apr. 26, 1940. Certificate of Service of Copy of Opposing Affidavit to the Law Offices of Minton and Rogers and handed it to their Secretary, filed.

May 6, 1940. Hearing on Motion for Order Vacating and setting aside service of summons and complaint as to Carol C. Johnson. No appearance for the motion. Plaintiff submitted his part of the argument on his said Opposing Affidavit. Decision Reserved. (Walker)

May 6, 1940. Hearing on Motion to Strike out Complaint as to Utah Fuel Company and H. Collin Minton, Jr. Appearance: H. Collin Minton, Jr., defendant. Plaintiff in person. Short Argument submitting his part on his said Opposing Affidavit. Decision Reserved. (Walker)

May 13, 1940. Notice of Motion for commission to examine witnesses residing out of the United States, filed.

May 13, 1940. Motion and Application to Take Depositions of Parties out of State, filed.

May 13, 1940. Notice of Motion for Order Staying Proceedings, filed.

May 13, 1940. Hearing on motion to take testimony out of Country. Decision Reserved. Hearing on motion to stay proceedings of case. Decision Reserved. (Walker)

May 13, 1940. Affidavit as to fees to parties and witnesses, filed.

May 13, 1940. Notice of service of copies of applications to take depositions, filed.

May 13, 1940. Amendment to original complaint, filed.

May 13, 1940. Summons on Amendment issued.

May 20, 1940. Notice of Motion to substitute Bamberger Coal Co. in place and stead of Simon Bamberger, deceased, filed.

June 3, 1940. Summons returned served on Dr. Leslie J. Paul, Personally, and on Bamberger Coal Co. by serving Wm. D. Eldridge, Vice President, on May 22nd, on Dr. Frederick Taylor, personally May 28th, filed.

June 10, 1940. Hearing on Motion to substitute Bamberger Coal Co. in place and stead of Simon Bamberger, deceased. Called and no Opposition. No Appearance for the Defendant. Decision Reserved. (Walker)

July 1, 1940. Motion and Notice of Motion for leave to amend prayer for relief, filed.

July 1, 1940. Motion and Notice of Motion for default Judgment, filed.

July 8, 1940. Hearing on motion for leave to amend prayer for relief, filed.

Hearing on motion for entry of Default Judgment. Decision Reserved. (Walker)

July 9, 1940. Affidavit of Service of Motion filed.

July 10, 1940. Notice of motion for leave to appeal without giving security for costs. Notice of Appeal to Court of Appeal, &c., filed.

July 22, 1940. Hearing on motion for leave to appeal without giving security for costs. Ordered motion granted but cost bond is to be placed with Clerk. (Walker.)

June 11, 1941. Notice of Motion and Motion and Affidavit thereto for permission to submit Affidavit and Exhibits in Opposition to the Motions to Dismiss, filed.

June 12, 1941. Stipulation adjourning motion filed (June 23).

June 23, 1941. Hearing on motion for permission to submit Affidavit and Exhibits in opposition to the motions to Dismiss. Appearance: Plaintiff in Person. In Opposition: H. Collin Minton, Jr. for himself, Utah Fuel Company, and for those for which he filed his Special Notice. Plaintiff submitted his Motion and moved to submit his Exhibits. Motion to submit the Exhibits granted and Exhibits submitted by the plaintiff and received by the Court in open court. Mrs. Bergen, Court Stenographer, in Person received took down the dictations of Judge Walker consisting of brief description of each Exhibit. Decision Reserved. (Walker)

Aug. 15, 1941. Notice of Motion for leave to file 2nd Supplemental Bill of Complaint, &c. filed.

Aug. 25, 1941. Hearing on motion for leave to file second supplemental Bill of Complaint adding parties defendants Etc. Plaintiff Appeared for the Motion and explained to the Court the loss of his envelope containing his motion papers and moved the court to postpone the hearing of the motion

to obtain copy from Clerk's Office. Motion denied. No Appearance in Opposition to the motion for leave to file 2nd Supp. Complaint. Motion Dismissed. (Smith)

November 19, 1941. Memorandum of Findings of Fact and Conclusions of Law, Filed. (Walker)

November 25, 1941. Order quashing service of Summons on Carol C. Johnson, filed.

November 28, 1941. Order striking service of summons as to Nicholas J. Pappas, Helen N. Pappas, Harry Sussman (not served. Out of District) and William V. Rosenkrans, filed.

Jan. 24, 1942. Notice of Appeal, filed.

Jan. 29, 1942. Transcript sent to C. C. A.

And the court having heard the arguments for and against the said three motion, and having received plaintiff's Opposing Affidavits and the exhibits submitted by him, the plaintiff, and after due deliberation having duly made its decision of its findings of fact and conclusions of law, and having duly filed and entered the same in the office of the Clerk of the Court; to which ruling of the court in so far as the granting of the motion of Carol C. Johnson, William V. Rosenkrans, et als., and to H. Collin Minton, Jr., as to his participation in the plot as set forth in the Complaint and Exhibits, the plaintiff have had timely excepted by filing his Exceptions and annexing the same to his Notice of Application for Writ of Mandamus;

Now, on Motion of the plaintiff, Nicholas J. Curtis, It is

ORDERED, Adjudged, and decreed that an Order on said Findings of Fact and Conclusions of Law be and the same is Ordered Entered on the Docket in the Office of

the Clerk of this Court at the Court House of the United States District Court for the District of New Jersey, at Trenton, New Jersey.

.....

Dated this ..... day of May, A. D., 1942.

Supplement:

May 4, 1940, Praecipe for Default of Pleading filed against Mark Tuttle.

May 2, 1940, Praecipe for Entry of the Default of Dr. E. R. Murphy and Charles W. Kutz, filed.

June 17, 1940, Praecipe for Entry of the Default of: 1. Dr. Fred. W. Taylor; 2. Dr. Leslie J. Paul; And the Bamberger Coal Company filed.

October 23, 1940, Clerk's Certificate as to the above three Praecipes for Entries of said defaults, filed.

.....

Dated the day and year as above subscribed.

Defendant	Where Served	Method of Service and Date
Dr. R. E. Murphy	Salt Lake City, Utah.	Personally — April 11, 1940.
Chas. W. Kutz	Washington, D. C.	Personally — April 6, 1940.
Dr. Percy Hickling	Washington, D. C.	(Deceased)
William H. Fay	Washington, D. C.	(Not Found)
William J. Hazen	Salt Lake City, Utah.	(Not Found)
William H. Folland	Washington, D. C.	by serving wife, Grace. April 9, 1940.
Dr. Leslie J. Paul	Salt Lake City, Utah.	Personally — May 22, 1940.
Dr. Samuel Wolf	Salt Lake City, Utah.	Deceased.
Simon Bamberger	Salt Lake City, Utah.	(Deceased)
Dr. Frederick Dunn	Springfield, Utah	Personally — April 11, 1940.

Dr. Frederick V. Taylor	Provo, Utah	Personally — May 24, 1940.
Dr. A. C. Callister	Salt Lake City, Utah.	Personally — April 9, 1940
Dr. D. E. Smith	Salt Lake City, Utah.	Personally — April 9, 1940.
Bamberger Coal Co.	Salt Lake City, Utah.	by Wm. D. Eldridge, V. P.—May 22, 1940.
Joseph Ririe	Salt Lake City, Utah.	(Deceased)
D. O. Larson	Salt Lake City, Utah.	Personally — April 9, 1940.
Charles E. Maybe	Salt Lake City, Utah.	Personally — April 9, 1940.
Mark Tuttle	Salt Lake City, Utah.	Personally — April 9, 1940.
W. D. Sutton	Salt Lake City, Utah.	Personally — April 9, 1940.
Dr. Robert S. Allison	Salt Lake City, Utah.	(Deceased)
Dr. Francis S. Bascom	Salt Lake City, Utah.	(Deceased)
Ferdinand Errickson	Salt Lake City, Utah.	(Deceased)
Louis Brownlow	Chicago, Illinois	(Not Found)

(SEAL)

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of this said Court at Trenton, in said District this 16th day of October, nineteen hundred and forty.

Benjamin F. Havens,
Clerk.

By Charles S. Chevrier,
Deputy.

ORDER EXTENDING TIME FOR ASSIGNMENT OF ERRORS, etc.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 7929.

NICHOLAS J. CURTIS,
Petitioner,
vs.
HON. THOMAS GLYNN WALKER and HON. WILLIAM F. SMITH, United States District Judges for the District of New Jersey.

Coram: Biggs, Maris and Clark, JJ.

Upon consideration of the petition of Nicholas J. Curtis, filed February 6, 1942,

It is ORDERED that the time for petitioner in the above entitled cause to file his assignment of errors and bond on appeal in the District Court of the United States for the District of New Jersey be, and the same is hereby extended to May 10, 1942.

John Biggs, Jr.,
Circuit Judge.

February 9, 1942.

OPINION.

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 7929. October Term, 1941.

NICHOLAS J. CURTIS,
Petitioner,
vs.
HONORABLE THOMAS GLYNN WALKER and HONORABLE WILLIAM F. SMITH, United States District Judges for the District of New Jersey,
Respondents.

On Petition for Writ of Mandamus.

Before BIGGS, JONES and GOODRICH, Circuit Judges.

Per Curiam.

The petition will be dismissed for lack of jurisdiction.

OFFICE OF THE CLERK
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT
2046 U. S. COURT HOUSE,
9th & CHESTNUT STS.
PHILADELPHIA

WILLIAM P. ROWLAND
Clerk

May 11, 1942

Mr. Nicholas J. Curtis
218 N. Montgomery St.
Trenton, N. J.
Dear Sir:

We have filed your petition to extend your brief beyond the fifty page limit of our rules, and also to extend the length of your statement of the questions involved. The court has made no definite order on this petition, but states it will accept your brief in the extended form, as requested.

Very truly yours,
Wm. P. Rowland
Clerk.

MEMORANDUM OF NICHOLAS J. CURTIS.

(EXHIBIT A OF JUNE, 1941. R. S. UT.)

1st. Application .to Receive under Section 85-7-28: pp. 1-2. By order of the judge of the district court issuing the commitment the relatives OR FRIENDS OF A PATIENT IN THE HOSPITAL MAY RECEIVE SUCH PATIENT THEREFROM: PROVIDED, no patient who is under a criminal charge or conviction shall be discharged from the hospital without the order of the court having jurisdiction of such criminal case. Applications must be made to the judge and satisfactory evidence produced that such patient will be properly taken charge of and given proper care. Such applicants shall give bond to the dis-

trict court of the county in substantially the following form: (form follows here);

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; . . . protest against wrongs, and petition for redress of grievances; . . . Const. of Ut. Article 1, Sec. 1;

Sec. 5 (Habeas Corpus)

The privilege of the writ of habeas corpus shall not be suspended, unless, in case of rebellion or invasion, the public safety requires it. Const. of Ut.;

Sec. 8. (Offenses bailable)

All prisoners shall be bailable by sufficient sureties, except for capital offenses when the proof is evident or the presumptions strong;

Sec. 9. . . . ; nor shall cruel and unusual punishment be inflicted. . . . ;

Sec. 11. (Courts Open. Redress of injuries;

12. (Rights of accused persons.)

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel, . . . ;

Sec. 24. (Uniform operation of laws.)

All laws of a general nature shall have uniform operation;

Art. IX, Sec. 19. But one form of civil action;

Art. XII. Corporations. Sec. 4 (corporations defined. Suits)

. . . shall be subject to be sued, in all courts, in like case as natural persons;

2nd. My Affidavit for leave to obtain to obtain the records of my case in order to prepare my defense while in the County jail. p. 3.

3rd. My Affidavit challenging the Judges of the Third Dist. Ct., Salt Lake County, Ut. pp. 4-7.

4th. Copy of my Complaint against Utah Fuel Co., et als., U. S. Dist. Ct. D. of Ut. pp. 8-12. Wm. H. Folland, defendant made the copy the bases of the criminal proceedings against me and made it a part of the Record. He was in the office of either City Attorney or District Attorney and the boss of the Dist. Ct. and co-defendant-partner of Ferdinand Erickson, Chief Counsel of the defendant Utah Fuel Co.

5th. Copy of Petition as an attempt to expose the plot. Original was turned over to the Police of the District of Columbia.

The Petition was issued pursuant to the authority of the provisions of Section 54 of Title 8.—Aliens and Citizenship.

Sec. 54. Speedy trial.—Whenever the President has reason to believe that offenses have been, or are likely to be committed against the provisions of chapter 3 of Title 18 or of Sections 246, 248, 443, to 445 of said Title 18, or of Section 51 of this title, within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and district attorney of such district to attend at such place within the district, and for such time

as he may designate, for the purpose of the more speedy arrest and trial of persons so charged, and it shall be the duty of every judge or other officer, when any such requisition is received by him to attend at the place and for the time therein designated. (R. S. 1988.) pp. 13-23.

6th. The Petition of defendants Louis Brownlow and Chas. W. Kutz for Writ De Lunatico Inquirendo—the commission of crime rendered probable. pp. 24-5.

7th. Court's Order on said Petition. p. 26.

8th. Writ of Summons against me while held as their prisoner. p. 27.

9th. Letter of the defendant Dr. Frederick Dunn to Judge G. A. Iverson written after the intervention of the Greek Consul. p. 28.

10th. My Motion to Quash, Vacate and Set Aside the Proceedings against me at Salt Lake City. pp. 29-33.

11th. My Letter to Herman Harms, (Dr) then my Landlord. 34-5.

12th. My Affidavit to my Motion to Quash above but is separated from it. p. 36.

13th. Joint Subpoena against the defendants:
William J. Fay,
Melvin Hazen,
W. H. Folland,
Judge Fredrickson of Utah Fuel Co. p. 37.

14th. Summons. U. S. Dist. Court, Dist. of Utah. Case No. 5547. Curtis vs. Utah Fuel Co., et als. pp. 38-39.

15th. Sheriff's Return Arresting me. p. 40.

16th. District Court or State printed form of Affidavit or Information issued against me by the defendant W. H. Folland, then defendant in my case 5547. See par. 4th above. 2 double pages make 4 single pages. pp. 4142, to be read in as 41-44. o.

17th. The Decree of Judge Wm. M. McCrea, the mob leader. 43.

18th. Sheriff's Return of Commitment. p. 44.

19th. The Affidavit or Information of William J. Fay, Agent of the Board of Charities of the District of Columbia in the Third Dist. Ct. of Salt Lake County, Utah. This would be the first Information against me in Utah but the record is confused. Two double pages 45-46.

20th. Sheriff's Office Return of Commitment. p. 47.

21st. Clerk's Certificate.

Nicholas J. Curtis.

MEMORANDUM OF NICHOLAS J. CURTIS, PLAINTIFF.

(EXHIBIT B. OF JUNE, 1941.)

(EXHIBIT C. OF JUNE, 1941.)

I now offer in evidence a certified copy of an Affidavit of Dan Curtis, companion-brother and assistant who assisted me to carry on the infernal plot.

Nicholas J. Curtis,
Plaintiff.

Together with the Exhibit B. first above I also offer in evidence the or a copy of an Affidavit of Christ Zavis, (Hristos Zavitsanos). These two witnesses are now residing in Greece, and are those for whom Applications have been made to take their Depositions. The Honorable Court's attention is hereby specially called to these two affidavits and the Depositions.

Nicholas J. Curtis,
Plaintiff.

MEMORANDUM OF NICHOLAS J. CURTIS, PLAINTIFF.

(EXHIBITS D. AND E. OF JUNE, 1941.)

I now offer in evidence two certified copies of two Motions duly verified by the defendant William H. Folland. These

Motions show the perjury or perjuries and subornation of perjuries resorted to and used to suppress the administration of justice in the State of Utah.

Nicholas J. Curtis.

MEMORANDUM OF NICHOLAS J. CURTIS, PLAINTIFF.

I now offer in evidence Certified copy of the case of Jeremiah Beals vs. Nick Curtis and Peter Zaritsons.

Exhibit F. of June, 1941. See page 36 of the Complaint or Declaration.

Exhibit G. Letter from the County Recorder of Box Elder County, State of Utah, under date of June 9, 1939. This letter shows that the assessed valuation of the Real Estate is $930.00. The house on the property is assessed at $170.00. We paid in cash U. S. Gold coin $1000. property taken away by perjury and subornation of perjury.

Exhibit H. A letter from the County Recorder of Box Elder County, Utah, giving the Record of the frauds on the farm.

Exhibit I. Copy of Deed from Kafton to the Union Central Life Insurance Co. The Insurance Company is holding the Title and one Lincoln Jensen is farming the farm.

Exhibit J. Copy of a Judgment which is pleaded on page 35 of the Declaration.

The conspiracy complained of has suspended the Statute of Limitations of the State of Utah, to-wit:

R. S. of Utah. 104-2-36. Effect of Absence from State.

If when a cause of action accrues against a person he is out of the state, (in my case I was deported by the defendants) the action may be commenced within the term herein limited after his return to the state; and if after a cause of action accrues he departs from the state, the time of his absence is not part of the time limited for the commencement of the action. (C. L. 17, Sec. 6479.)

104-2-19. Id. Disabilities Enumerated—Time of Not Reckoned.

At the time of the writing of this Memo I am unable to locate a copy of the Sections of the R. S. of Utah which I have prepared for the Court. I will keep on searching for it and submit it. N. J. Curtis.

Peter Zavitsanos is dead. Recording, R. S. Uta., 19-18-6 (11) 10.

Judgments Affecting Real Estate. 19-18-10.

12. Notice Imparted. 19-18-11. Recordation Imparts Notice. 8-1-6; 78-3-2.

MEMORANDUM OF NICHOLAS J. CURTIS, PLAINTIFF.

Please see the Petition. Abraham L. Rosenberg, Attorney, and Minas Candaras, defendant, appeared before the Commissioner for the hearing on the Rule to Show Cause.

First of all Rosenberg attacked me and stated to the Commissioner thus:

He should be kept in an Institution.

He sues us here and there and brings us up here.

Nicholas J. Curtis,
Plaintiff.

Exhibit K. Letter of Abraham L. Rosenberg relating to the case of Curtis v. Minerva Restaurant, dated Feb. 27, 1935.

Exhibit L. Another Letter from Rosenberg in the same case.

Exhibit M. The Original of the Petition for Rule to Show Cause before Jerome J. Dunn, Commissioner.

Exhibit N. Petition for Rule to Show Cause.

Exhibit O. Order on the Petition for Rule to Show Cause.

Note. The Hon. James H. White, Judge of the District Court at Hackensack, N. J., is hereby credited with all due respect to his judicial integrity and for refusing to entertain charges relating to the plot or conspiracy. He gave judgments in two of my many cases in accordance with my pleadings and the laws of the State.

Nicholas J. Curtis.

Exhibit P. The Petition of James A. Demis by Thomas S. Doughty, Solicitor of Petitioner.

Exhibit Q. The Affidavit of James A. Damis (Demis).

Exhibit R. Order on Petition and Affidavit.

Exhibit S. Certificate.

Memorandum. During the time the proceedings were

instituted and at the time James A. Damis (Demetrios Demopoulos) swore and said that:

(6) That the persons having an interest, or claiming to have an interest in the said sum of Seventy-one Thousand Two Hundred Dollars ($71,200.00) is your petitioner, and the following tenants and encumbrancers: (fifth Par.)

George Curtis and John Nicholaidis, who hold a lease, covering a portion of the building located on the property so taken, which said lease bears date the 21st day of May, 1926.

Both George Curtis and John Nicholaidis were not his tenants. John Nicholaidis long before then sold his interests to Dan Curtis, my Brother, and some time thereafter George Curtis sold his interest to Dan Curtis, my brother and companion. For or about two years then last passed Dan Curtis and myself operated the Lunch Room on the corner of said house and James Damis was receiving his mail there. He promptly received all his monthly rents. The building was being taken down and we were there operating the lunch room. Thomas Doughty came across the street on the east side of the street and watched the working men working above us and the lunch room operating under them. There my brother pointed out to me Thomas Doughty and told me that he was the attorney who was the right hand of James A. Damis. The two defrauded the moneys paid by the City of Ridgewood for the lunch room. Doughty asking: Q. Who occupied the lunch room? A. His name was George Curtis. Q. Will you tell about his lease? He abandoned the property didn't he, and told you he was leaving the property? A. Yes.

The plot worked both against me and my brother.

Nicholas J. Curtis.

UNITED STATES DISTRICT COURT,
DISTRICT OF NEW JERSEY.

NICHOLAS J. CURTIS vs. UTAH FUEL COMPANY, ET ALS., No. 725.

NICHOLAS J. CURTIS, PLAINTIFF:

I now offer in evidence a copy of the Record of my case against James and Rosalyna Peraino. 4th Judicial District Court of Bergen County. I have been unable to obtain certification. See letters sent and received which are parts of the Record here. See the U. S. Post Office Money Order received which is in the Record;

A Memo. of the Docket Entries of the Paterson Savings Institution Case against me for $75.00 and costs for room rent. I have been unable to obtain a copy of the perjured complaint. See the inclosed copies of the letters sent and received which are parts of the Record herein;

And copies as served upon me in the matter of Paterson Savings Institution vs. B. L. Marcus.

I cannot say any more than to call the attention of the Honorable Court to the matters and things set forth in the Record submitted herewith.

And I do charge that the conspiracy is on in full force to date (June, 1941) within the District of New Jersey and particularly the Division of the Federal District Court for the District of New Jersey, at Newark, New Jersey.

Respectfully,

Nicholas J. Curtis.

UNITED STATES DISTRICT COURT,
DISTRICT OF NEW JERSEY.

NICHOLAS J. CURTIS vs. UTAH FUEL COMPANY, ET ALS., No. 725.

MEMORANDUM OF NICHOLAS J. CURTIS, PLAINTIFF.

I now offer in evidence the files and records and the Transcript of the Record of the Case of Nicholas J. Curtis vs. Mathew Zervos, et als. Police Department, City of Poughkeepsie; City Court of the City of Poughkeepsie, Dutches County, State of New York, and further set forth as follows:

Mathew Zervos now was Mathew Leins in 1925, and fully co-operated with the defendants Wm. V. Rosenkrans, Pappases, Sussman and Nicholaidis in the plot to defraud me of my wages at Paterson, N. J. Please see the Affidavit of John Gall, my attorney. It is annexed to my Opposing Affidavit issued against their motion to dismiss the present suit. See pages 66-67 of the Printed Parts of the Record as Printed for the U. S. Supreme Court. From Paterson, N. J., he went to Hackensack, N. J., where he cut some one with a knife and got away with it leaving Hackensack, N. J. While at Newburgh, N. Y., a cook gave me the name and address of the Bardavon Eat Shop and asked me to go there and ask for work. Thereafter I went there and did not ask for work but I took coffee etc. Mathew Zervos came out of the kitchen and asked me to go to work. I

went. Christmas came and he got so drunk and attacked a Polish man in the cellar and nearly killed him in the dining room. Was arrested and the day of the hearing he asked me to go to his lawyer's office with him. He also asked one waitress and the three of us went. There his lawyer rehearsed us what to say and directed that the truth be not said. The plot was carried out and the results of it were so the Prosecutor asked the Polish boy to sign complaint against me. He refused saying that I helped him out to get away and in doing so I got hit. . . . The criminal conspiracy of Utah. Mathew Zervos acquitted with honors. Chas. J. Corbally, J.

On my way back from the Circuit Court of Appeals Third Circuit I was held up by the bus driver and made to pay 70 cents over and above my return ticket. See the Slips included in the Exhibit.

I complained to the Police Department and the Sergeant-at-Desk sent me to the Clerk of the City Court. I went to the Clerk of the City Court and he instructed me to return. I returned and met some one from the Prosecutor's Office and he begun asking incriminating questions leading to the plot. Failing he instructed me to leave and advised me that I will hear from them. Never heard from.

The printing of the parts of the Record, the Petition for Writ of Certiorari, and the Brief thereto was being done by the Lansing Brous Printing Company, Poughkeepsie, N. Y. and I was working making up money to pay for the job. The foreman, Mr. Perry, came to the restaurant and inquired of matters and things, mistakes etc. Mathew Zervos overheard the case going to the Supreme Court and he became uneasy for his part of the plot. See the Complaint and Request to Find. The last time I called for my wages Mathew Zervos called on John Scordos, his cook, to give me something to eat and ask

me to go back to work for him. Scordos answered to him that he have had asked me to eat and I refused. Zervos then told him: Then he will not come to work. He will get his money and pay the printers and take care of his case and leave us. I will give him nothing. You are not to say anything of what happened here. Scordos: No I will say nothing. . . . On the hearing of the case I submitted to the Judge the Complaint and at the Judge's suggestions I gave a copy of the complaint to Harry Mustakas who appeared for Zervos. The Judge gave him time and instructed him to read it. He read it and then he was asked by the Judge what has he to say. He answered: No, I owe him nothing. I paid him. During his questioning the Judge called him to his side and the two staged a rats' performance of their affections. At the end of the trial the judge announced: Decision reserved. And jumping off the Bench he murmured: This man appears mentally deranged. Let's see what the Clerk says.

See the Stenographic Transcript of the Case.

Judge Corbally refused to enter his decision and I issued the Request to Find Pleading. See the copy of it. It is a part of the Record.

The Telephone Directory Gives: Corbally, Chas. J. Lawyer, 226 Union Street. (Poughkeepsie, N. Y.) In the Bldg. given there the names of 4-5 lawyers are listed with Corbally's and the windows of the City Court Room face those of the Law Offices of Corbally and others. Union Street is a one way street and a few rods from Zervos' restaurant.

Zervos believed that the case was lost and while in his trouble with the City Court he confided to me how he receives his defense from Corbally himself in the Masonic Temple where they meet and then presents them to him

in court; and how he passes to Corbally the liquor in the Temple.

The sum of $30.00 thus withheld or being defrauded; the would be City Court Action or Proceeding which would have to be resorted to; and the throwing me out of work and assaulted out of their restaurant (in their minds) would defeat the Certiorari Proceeding and probably the Mandates to the Clerk of this Court. To meet this plot the Printers helped me.

Nicholas J. Curtis,
Plaintiff.

MEMORANDUM.

Following the case of the Owl Restaurant I submit my own copies of my case against Constantine and Ellis, Inc., Newburgh, New York, and charge that the Director whose letters are made parts herewith followed the plot in every case which was sent to here. To the same effect with the Industrial Commissioner who failed to deal with the appeals made to her to check the corruptive practice carried on in the case. The plot pulled out the Alps Restaurant just as you would pull out an onion off the ground in the spring.

Nicholas J. Curtis,
Plaintiff.

Plaintiff's Note. Reference is made above of the case of Curtis vs. The Owl Restaurant, et als. The best parts of the Record of that case are to be found in the Photostated Exhibits but my copy of the Memo. is missing. The Court's attention is called to the Photostated Record of the Exhibits.

UNITED STATES CIRCUIT COURT OF APPEALS
OF THE THIRD CIRCUIT.

NICHOLAS J. CURTIS,
Plaintiff-Appellant,

vs.

UTAH FUEL COMPANY, et al.
Appellees.

MEMORANDUM OF APPPELLEES, DR. FREDERICK DUNN, DR. A. C. CALLISTER, DR. E. D. SMITH, CHARLES E. MABEY and WILLIAM D. SUTTON.

COUNTER-STATEMENT OF QUESTION.

The question involved, insofar as it affects these Appellees, is this:

Was the District Court justified in granting the motion to quash service of summons on Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey and William D. Sutton?

COUNTER-STATEMENT OF THE CASE.

In the District Court, H. Collin Minton, Jr. Esq., appeared specially as counsel for the above named Appellees

and moved to quash the service of summons. The motion was granted by the District Court.

The undersigned come now and enter their appearances as co-counsel with said H. Collin Minton, Jr. and H. Brua Campbell, Esq., representing the above-named Appellees for the purposes of this appeal. We feel that the Counter-Statement of the case and the arguments and appendix contained in the "Memorandum of Appellees" previously filed with this court, when considered in the light of the provisions of Title 28, U. S. C. A. 112, support the ruling of the District Court as it affects the above named Appellees.

Accordingly, in joining with Messrs. Minton and Campbell we wish hereby to adopt and to stand upon the said Memorandum of Appellees as previously prepared by Messrs. Minton and Campbell and filed with this Honorable Court. We submit that the appeals should be dismissed.

Respectfully,

GROVER A. GILES,
Attorney General of the State of Utah.

ZAR E. HAYES,
Assistant Attorney General of the State of Utah.

Associated with:

H. COLLIN MINTON, JR. and
H. BRUA CAMPBELL,
As Attorneys for Appellees Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey and William D. Sutton.

NOTICE OF MOTION TO STRIKE.

To Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey and William D. Sutton, Appellees, and Grover A. Giles, Attorney General of the State of Utah, Zar E. Hayes, Assistant Attorney General of the State of Utah, H. Collin Minton, Jr., and Brua Campbell, Their Attorneys:

Take Notice that at the hearing before the Judges of the United States Circuit Court of Appeals, Third Circuit, I will move to strike your Memorandum so filed by you upon the grounds set forth in the following Motion.

Respectfully,

NICHOLAS J. CURTIS, LL.B.,
Appellant Appearing in Person,
Post Office Box 972,
Trenton, New Jersey.

RECORD.

To the Honorable Judges of the Circuit Court of Appeals for the Third Circuit:

Nicholas J. Curtis, plaintiff, refers to the so-called Memorandum of Appellees filed herein which is construed by the plaintiff to be an obscene and objectionable pleading. New Jersey Supreme Court Rule 39 (Rule 25, Pr. Act 1912).

Plaintiff moves to strike this Memorandum of Appellees from the records of this Court upon the following grounds and each of them:

1. The pleading is irregular, defective, scandalous, obscure, uncertain, and obscene. (We submit that the Appeals should be dismissed.) (Rule 25, Pr. Act 1912.)

2. The first Appeal in this Court is case No. 7525, October Term, 1940, and is construed by the plaintiff to be a separate and distinct proceeding.

3. The case now before this Court is Case No. 8027, October Term, 1942, and is construed by the plaintiff to be a separate and distinct proceeding from said Case No. 7525.

4. The present practice of this Court is that heretofore customarily followed in this Court. (Rule 10, par. 1 of the Rules of this Court.)

5. The practice heretofore followed in this Court is the same as in the Supreme Court of the United States, as

far as the same may be applicable. (Form Rule 8 of this Court.)

6. Rule 27 of the present Rules of this Court provides: Within 30 days after the record is filed with this Court the Appellant or petitioner . . . shall file with the Clerk 20 copies of a printed brief and serve five copies thereof on each opposing counsel. The plaintiff has complied with said paragraph and the Order of this Court. (See p. 35a of Plaintiff's Brief.)

7. The second paragraph of present Rule 27 of the Rules of this Court provide: The Appellee or respondent shall in like manner file and serve a brief within 20 days after the filing and serving of the Appellant's or petitioner's brief. This has been utterly violated by the said Attorneys who now appear and file said Memorandum.

Former Rule 24, par. 3, provides: . . . the counsel for the defendant in error or Appellee shall file with the Clerk twenty printed copies of his brief and give not less than five copies to the counsel for the plaintiff in error or appellant. His brief shall be of a like character with that required of the appellant. These parts of former Rule 24 have been also utterly violated by said attorneys.

(Waiver: By Appellees of right to file statement opposing jurisdiction; Rule 12, par. 3, p. 10, U. S. Supreme Court Rules; of right to file brief (etc.). Rule 38, par. 4, p. 31; Rule 41, par. 5, p. 34.)

8. The said Appellees and their said Attorneys failed and neglected to file any joinder of the issues (questions involved as set forth in the plaintiff's brief). New Jersey Supreme Court Rule 36. Joinder of Issue.) (Rule 22, Pr. Act 1912.)

See also requirements of Rules 46, Evasive Denials; 47, Certainty of the Rules of Practice of the Supreme Court of the State of New Jersey and the Brief of the Appellant.

9. The District Court was not justified in granting the motion to quash summons on Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey and William D. Sutton. (Answer to Appellees' Counter Statement of Question.)

The District Court says: (Ruling on Motion No. 2, pp. 19a, 20a of Brief) Except as provided in Sections 113 to 118 of Title 28 U. S. C. A., no civil suit shall be brought in any District Court against any person by any civil process or proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different States, suits shall be brought only in the district of the residence of either the plaintiff or the defendant.

The first provision has been violated because the plaintiff has attempted to bring the action in question in the district (New Jersey) where he says he resides, and the second provision has been violated because where jurisdiction rests on diverse state citizenship only, the suit instituted in the residence of the plaintiff can effect nothing unless he is able there to secure the service of process on the defendants.

The motion is granted and service of summons on Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey (Charles R. Mabey), and William D. Sutton is quashed. The District Court is utterly wrong, because the jurisdiction of the District Court . . . does not rest on diverse state citizenship only . . . (see par. b on page 3 of the Complaint or Declaration; The present Brief on file in this Court, and the Record of the case in this Court.

It is truly insisted by the Appellant that the inhibition or the law found in the provisions of Section 112, Title 28 U. S. C. A. does not support the said Ruling of the District Court because the inhibition or prohibition, or restriction found in the provisions of said Section 112 does not apply to nor govern the present suit now pending in this Court, because the action arises under Articles of the Constitution of the United States cited in par. b, on page 3 of the Complaint. As well as the . . . Laws of the United States . . . cited in said par. b of the complaint and in the Brief.

10. Notwithstanding the status of the said appellees the appeal cannot be legally dismissed because the appeal is taken against all the defendants, as well as residents as non-residents.

11. The action of the said Attorney General and the said Assistant Attorney General as by them taken in behalf of the defendant-appellees is a violation of and contrary to the provisions of Article VII, Section 18 of the Constitution of the State of Utah, and of the provision of the law found in R. S. of Utah, 87:6-1 (1 and 13), to wit:

Constitution of the State of Utah, Article VII, Section 18:

(Duties of Attorney General.)

The Attorney General shall be the legal adviser of the State officers, and shall perform such other duties as may be provided by law.

Chapter 6. Attorney General.

87:6-1. General Duties.
It is the duty of the Attorney General:

(1) To attend the Supreme Court of this State, and all courts of the United States, and prosecute or defend all causes to which the State or any officer, board or commission thereof in an official capacity is a party, and he shall have charge as attorney of all civil legal matters in which the State is in any wise interested.

(2) to (12) left out.

(13) To institute and prosecute proper proceedings in any court of the State or of the United States to restrain and enjoin corporations organized under the laws of this or any other State or territory from acting illegally or in excess of their corporate powers or contrary to public policy, and in proper cases to forfeit their corporate franchises, dissolve such corporations, and wind up their affairs. (C. L. 17, Secs. 5936 to 5938.)

12. In addition, however, the plaintiff's suit is also maintainable in the District Court of the United States for the District of New Jersey, upon the grounds that, and for the reasons that for a period of 29 years, or thereabout, the courts of the State of Utah denied civil rights and he was unable to secure the benefits for the rights secured to him by the United States Constitution and the laws of the United States providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction of the United States. The conspiracy was carried into the United States District Court for the District of Utah and by perjured pleadings and mob tactics that tribunal has been and is unable to do justice in the case.

See, to wit:

United States Code A. Title 28, Sections 71, (Judicial Code, Section 28 Amended.) Removal of Suits from State Courts; 74 (Judicial Code, Section 31.) Same; causes against persons denied civil rights.—Whenever any civil suit or criminal prosecution is commenced in any state court, for any cause whatsoever, against any person who is denied or cannot enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction of the United States . . . may be removed;

77. (Judicial Code, Section 34.) Same; suits by Aliens.—See the Exhibits as to the truth of the facts.

13. The Memorandum of Appellees and their said attorneys is an unusual and objectionable proceeding as will be readily seen by this Court. Each and every one of the grounds set forth above constitute sufficient basis for an Order of this Court striking the same from the record.

Respectfully submitted by

NICHOLAS J. CURTIS, LL.B.,
Plaintiff-Appellant Appearing in Person,
Post Office Box 972,
Trenton, New Jersey.

Dated this 28th day of September, 1942.

I hereby certify that in my opinion said motion is well founded in point of law.

NICHOLAS J. CURTIS, LL.B.,
Appellant.

UNITED STATES CIRCUIT COURT OF APPEALS

THIRD CIRCUIT

NICHOLAS J. CURTIS,
Plaintiff-Appellant

vs.

UTAH FUEL COMPANY, et al.,
Appellees.

MEMORANDUM OF APPELLEES

COUNTER-STATEMENT OF QUESTIONS

1. Was the District Court justified in striking Counts 23 and 24 of the complaint?

2. Was the District Court justified in granting the motion to quash the service of summons on Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Maybe and William D. Sutton?

3. Should the Court have entered a default judgment against the Bamberger Coal Company?

COUNTER-STATEMENT OF THE CASE

This matter has frequently been brought before this Court; and any analysis of the facts would seem to be an imposition upon the Court's time.

To requote to the Court a case which has been frequently quoted prior to this date:

> "Having read the said petition, motions and demurrers, this Court is of the opinion that the bulk of said petition is a confused mass of allegations which bear no relation to each other. They are impertinent and irrelevant, scandalous in their nature, and the whole petition bears upon its face evidence that it was intended to villify and abuse the defendants, rather than a lawyer-like effort to set forth a legitimate cause of action." *Crabtree* vs. *Steele,* 115 N. W. 593, Sup. Ct. of Iowa, 1908.

As stated by this Court in this same entitled cause by opinion filed March 15, 1938:

> "The whole complaint is prolix, verbose and incoherent. Making all due allowance for the fact that the plaintiff is not a member of any bar (although he subscribes himself a bachelor of law) the document on its face fails to disclose any cause of action against the defendants herein."

As to the first question, a reading of Counts 23 and 24 presents the best arguments for the actions of the District Court.

As to the second question, the best argument is the ruling of the District Court, which, for convenience, is herewith repeated:

> "Except as provided in Sections 113 to 118 of Title 28, U. S. C. A., no civil suit shall be brought in any dis-

trict court against any person by any civil process or proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suits shall be brought only in the district of the residence of either the plaintiff or the defendant.

"The first provision has been violated because the plaintiff has attempted to bring the action in question in the district (New Jersey) where he says he resides, and the second provision has been violated because where jurisdiction rests on diverse state citizenship only, the suit instituted in the residence of the plaintiff can effect nothing unless he is able there to secure the service of process on the defendants.

"The motion is granted and service of summons on Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Maybe (Charles R. Mabey) and William D. Sutton is quashed."

As to the third question, the docket does not show that Judge Walker ever ruled upon the application to substitute Bamberger Coal Company in the place and stead of Simon Bamberger, deceased (p. 30-a et seq., Brief for Appellant). *Ergo,* this Court has no jurisdiction.

The appeals should be dismissed.

Dated
July 23, 1942

H. Collin Minton, Jr.,
Attorney for Utah Fuel Co., and pro se, and as per Exhibit "A."
Trenton Trust Building,
Trenton, N. J.

H. Brua Campbell,
Of Counsel,
40 Wall Street,
New York, New York.

Exhibit "A"

(*Exhibit "A"*)

To clarify counsel's representation, copy of letter with respect to same furnished Judge Walker is exhibited herewith:

MINTON & ROGERS
COUNSELLORS AT LAW
TRENTON, NEW JERSEY

H. Collin Minton, Jr. Trenton Trust Building
Norman T. Rogers
B. Braddock Dinsmore, Jr.

July 26, 1940.

Honorable Thomas Glynn Walker,
Judge U. S. District Court,
Post Office Building,
Newark, New Jersey.

Re. *Curtis* vs *Utah Fuel Co.*

MY DEAR JUDGE WALKER:

With the exception of those parties defendants represented by Mr. Rosenkrans, and Carol C. Johnson, appearing personally, I represent all the other defendants. I have made a motion with respect to defendants Dunn, Callister, Smith, Mabey and Sutton appearing specially for that purpose. On the record I moved to dismiss on behalf of the Utah Fuel Company and myself personally. It is my understanding that if the motion to dismiss is granted, the benefits will run to all parties. On the argument on May 6, 1940, on motion to dismiss, if I recall correctly and the transcript will so indicate, I stated my full representation.

The record in the Clerk's office shows that the only defendants represented by me, who were properly served in this District, were the Utah Fuel Company and myself. It, therefore, follows that the only parties represented by me who are properly before this Court are those parties so served. The reason why I entered a special appearance on behalf of Dunn, Callister, Smith, et al., was because I was so directed by a law firm in Salt Lake City.

The plaintiff has cited in his complaint parties defendant out of the jurisdiction of this Court on the ground that "complete relief is to be accorded but they are neither inhabitants of, or are they to be found within the jurisdiction of this Court." An examination of the statutes and rules cited by plaintiff gave no basis for such relief in a proceeding of this nature.

No answers have been filed to date by me on behalf of my clients for two reasons, first, on May 6th it was stated by the Court that pending a ruling on the motion to dismiss and expunge, all matters would be held in abeyance until decision thereon; second, because of the factual basis for the motion made, it would be impossible to prepare an answer to incoherent pleadings.

I have been advised that plaintiff has taken an appeal from your Honor's ruling of July 8, 1940. How an appeal can be taken without an order entered is beyond my conception of practice.

Your Honor may be already advised that plaintiff has been bringing these suits for years, and has had me twice before the Circuit Court of Appeals in Philadelphia within the last three years. I believe that the first suit which he started was started shortly after our good friend Judge Bodine had been elevated from the District Attorney's office to the Federal Bench. It is my humble suggestion

that the rules of this District be revised to afford some relief against recurrent and unfounded litigation.

Respectfully yours,

H. C. MINTON, JR.

HCM:H
cc Campbell
P. S. Attached hereto is a list of all the defendants whom I represent, with their addresses, and method and place of service.

Defendant	*Address*	*Method of service*
Dr. R. E. Murphy	Salt Lake City	Personally — Apr. 11, 40
Chas. W. Kutz	Washington, DC	Personally — 4/6/40
Dr. Percy Hickling	Washington, DC	(deceased)
William H. Fay	Washington, DC	(Not found)
William J. Hazen	" "	(" ")
William H. Folland	Salt Lake City	By wife, Grace 4/9/40
Dr. Leslie J. Paul	" " "	Personally — 5/22/40
Dr. Samuel Wolf	" " "	(deceased)
Simon Bamberger	" " "	(deceased)
Dr. Frederick Dunn	Springville, Utah	Personally — 4/11/40
Dr. Frederick W. Taylor	Provo, Utah	Personally — 5/24/40
Dr. A. C. Callister	Salt Lake City	Personally — 4/9/40
Dr. D. E. Smith	Salt Lake City	Personally — 4/9/40
Bamberger Coal Co.	Salt Lake City	By William D. Eldridge V. P.,— 5/22/40

Joseph Ririe		(deceased)
D. O. Larson	Salt Lake City	Personally — 4/9/40
Charles E. Maybe	Salt Lake City	Personally — 4/9/40
Mark Tuttle	Salt Lake City	Personally — 4/9/40
W. D. Sutton	Salt Lake City	Personally — 4/9/40
Dr. Robert S. Allison		(deceased)
Dr. Francis S. Bascom		(deceased)
Ferdinand Erricksen		(deceased)
Louis Brownlow	Chicago, Ill.	(Not found)

All the above are defendants whom I represent in the matter of *Curtis* v. *Utah Fuel Company.*

APPENDIX

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY.

NICHOLAS J. CURTIS,
Plaintiff,

vs.

THE UTAH FUEL COMPANY, a corporation, et als.,
Defendants.

Civil Action File No. 728
Action at Law

271

NOTICE OF MOTION

Filed April 24, 1940

To NICHOLAS J. CURTIS, *Plaintiff*:

PLEASE TAKE NOTICE that on behalf of The Utah Fuel Company and H. Collin Minton, Jr., we shall apply to the Honorable Phillip Forman, one of the Judges of the United States District Court for the District of New Jersey, at the United States District Court Room, Post Office Building, Trenton, New Jersey, on Friday, May 3, 1940, at ten o'clock (Daylight-Saving Time) in the forenoon or as soon thereafter as counsel can be heard, for an order striking out the complaint filed by you in the above stated cause upon the following grounds:

1. In the first count the plaintiff fails to allege any facts tending to show an obligation on the part of the defendant, The Utah Fuel Company, to reimburse the plaintiff for the alleged expenditures by the plaintiff for the benefit of another, or of any agreement or undertaking on the part of the defendant company so to do. Nor is Exhibit "A" referred to therein evidence of any such alleged obligation.

Plaintiff relies upon the allegations of paragraphs 3 to 13 as a basis for establishing the obligation alleged in the first count. While the said paragraphs may allege an agreement between the defendant company and a third person, there is no allegation therein contained of any expressed or implied agreement on the part of the defendant company to reimburse plaintiff for alleged voluntary expenditures by plaintiff for the benefit of said third person.

2. In the second count the plaintiff fails to allege any facts which would disclose a cause of action against the defendant-company and its agents or associates, and the allegations of paragraphs 36 to 39 therein referred to set forth facts that are totally disconnected with the activities

of the company-defendant and its agents and associates. The second count contains vague, indefinite and unrelated allegations, and is made up of accusations and conclusions of law totally unsupported by alleged facts.

3. In the seventh count the plaintiff fails to allege any facts which would constitute grounds for a cause of action against the defendant-company and its agents, and it is otherwise indefinite, uncertain, scandalous and bad for duplicity, and is made up of accusations and conclusions of law totally unsupported by alleged facts.

4. In the eighth, ninth and tenth counts plaintiff fails to allege any actions of the therein-named defendants which are in any way attributed to the defendant-company and its agents and associates, and hence the allegations of activities on the part of the therein-mentioned defendants which took place more than twenty years ago are totally unrelated to any alleged acts of the defendant-company. In addition there is contained in the tenth count scandalous charges against an officer of the United States courts.

5. In the eleventh, twelfth, thirteenth and fourteenth counts plaintiff makes scandalous accusations of alleged misconduct on the part of the defendant-company and its agents and associates—which wrongful acts, it is alleged, took place more than twenty years before and were committed with the purpose of preventing plaintiff from prosecuting an alleged cause of action against the defendant-company. There are, however, no facts alleged which would tend to establish the claim that plaintiff had cause to institute suit against defendant-company and, indeed, the plaintiff's allegations clearly defeat the contention that he has or ever had a cause of action against defendant-company.

6. The fifteenth, sixteenth and seventeenth counts contain nothing more than a number of unrelated, irrelevant and scandalous charges against several named defendants who are in no way alleged to have acted as agents or associates of said defendant-company, or to have had any connection with said defendant-company.

7. The eighteenth, nineteenth and twentieth counts contain further unrelated, irrelevant and scandalous charges involving alleged acts performed approximately eighteen years ago by persons whose connection with defendant-company is not stated. Furthermore it is alleged that such remote and unrelated acts were done for the purpose of preventing plaintiff from prosecuting an alleged cause of action which is shown on the face of the complaint never to have existed in the plaintiff's favor.

8. The twenty-third and twenty-fourth counts contain scandalous charges that the defendant-company conspired with petitioner herein to maliciously renew and reopen the alleged persecution of the plaintiff—although it appears from the allegations of the plaintiff that petitioner herein appeared in behalf of defendant-company in answer to a complaint filed by said plaintiff against said company-defendant.

9. The twenty-fourth count also contains unrelated and scandalous allegations concerning the courts and officials of the United States.

10. The twenty-fifth count contains only a narrative of facts which are unrelated, irrelevant, immaterial and scandalous, and contains no allegation of probable cause.

And Further Take Notice that at said time and place we will move for an order striking the said complaint and

all counts therein upon the ground that said document contains unrelated and scandalous allegations concerning the courts and officials of the United States of America and the State of Utah, and should not be allowed to remain among the records of this Court.

Respectfully,

MINTON & ROGERS,

Attorneys for Defendants, The Utah Fuel Company and H. Collin Minton, Jr.

NOTICE OF MOTION TO STRIKE.

TO DR. FREDERICK DUNN, DR. A. C. CALLISTER, DR. E. D. SMITH, CHARLES E. MABEY, WILLIAM D. SUTTON, H. COLLIN MINTON, Jr., and H. BRUA CAMPBELL:

PLEASE TAKE NOTICE that at the hearing before the Judges of the United States Circuit Court of Appeals, Third Circuit, I will move to strike your Second Memorandum so filed by you upon the grounds set forth in the following Motion.

Respectfully,
NICHOLAS J. CURTIS, LL.B.,
Appellant Appearing in Person,
Post Office Box 972,
Trenton, New Jersey.

RECORD.

TO THE HONORABLE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT:

Nicholas J. Curtis, plaintiff, refers to the so-called Second Memorandum of Appellees filed herein which is construed by the plaintiff to be an obscene and objectionable pleading. (New Jersey Supreme Court Rule 39. Rule 25, Pr. Act 1912).

Plaintiff moves to strike this said Memorandum of Appellees from the Records of this Court upon the following grounds and each of them:

1. The pleading or Second Memorandum is irregular, defective, scandalous, uncertain and obscene, and contains unnecessary repetitions, prolixity, scandal, and impertinence, and is so framed as to vex the plaintiff and to embarrass or delay a fair trial. (Rule 25 Practice Act 1912.)

In addition, however, it can justly be said that the said Second Memorandum constitutes nothing more than an additional overt act of the conspiracy to corruptly obstruct and impede the due administration of justice in this court and in the District Court of the United States for the District of New Jersey and continue the operations of their infernal conspiracy to the same effect as they did do in the District Court of the United States for the district of Utah. See the Exhibit photostated and filed in this Court. See Curtis vs. Utah Fuel Company et als. in Equity, U. S. Dist. Ct. Dist. of Ut.

2. A joint Memorandum has been issued, filed and served by Grover A. Giles in his official capacity as Attorney General of the State of Utah, Zar E. Hayes in his official capacity as assistant Attorney General of the State of Utah, as being associated with H. Collin Minton, Jr., and H. Brue Campbell as attorneys for said Appellees which Memorandum may it please the Court see. In the said first Memorandum the said attorneys state:

We wish to adopt and stand upon the Memorandum of appellees (etc.) They went back to the pleading filed by said local attorneys in the first appeal.

3. Whatever faults or objections they have had framed up as against the first appeal have no bearing in this appeal, because the matters and things set forth in the Complaint have been, in part, made clear and secure by the decree of this Court directing the District Court to proceed according to right and justice and the laws of the United States, and by the Decree of the District Court which Decree became final as against the defendants after the expiration of the three months' period of time for them to appeal therefrom. The present appeal is taken for the reasons and errors assigned. (Appellant's Brief, pages 95-98.)

4. A Motion to Strike the said first Memorandum has been issued, filed, and served, and now come the defendants and their said attorneys and issue, file and serve Second Memorandum and quote: . . . vilify and abuse the defendants . . . p. 2. This 2nd Memorandum has been issued, filed and served in violation of the provisions of par. 1 of Rule 27 of the Rules of this Court providing: No other briefs may be filed without special leave of the Court

5. The first Appeal in this Court is case No. 7525, October Term, 1940, and is construed by the plaintiff to be a separate and distinct proceeding. The case now before this Court is Case No. 8027, October Term, 1942, and is construed by the plaintiff to be a separate and distinct proceeding from said case No. 7525.

6. The present practice of this Court is that heretofore customarily followed in this Court. (Rule 10, par. 1 of the Rules of this Court. The practice heretofore followed in this Court is the same as in the Supreme Court of the United States, as far as the same may be applicable. (Former Rule 8 of this Court.)

7. Rule 27 of the present Rules of this Court provides: Within 30 days after the record is filed with this Court the Appellant or petition . . . shall file with the Clerk 20 copies of a printed Brief and serve five copies thereof on each opposing counsel. The plaintiff has complied with the provisions of said paragraph and the Order of this Court. (See p. 35a of Plaintiff's Brief.)

The second paragraph of present Rule 27 of the Rules of this Court provides: The Appellee or respondent shall in like manner file and serve a brief within 20 days after the filing and serving of the Appellant's or petitioner's Brief. The provisions of this said par. have been violated by the said Attorneys who now appear and file Memorandum upon Memorandum. Former Rule 24, par. 3, provides: . . . the counsel for the defendant in error or Appellee shall file with the Clerk twenty printed copies of his brief and give not less than five copies to the counsel for the plaintiff in error or appellant. His brief shall be of a like character with that required of the appellant. These said provisions have been violated by said attorneys.

Waiver: By Appellees of right to file statement opposing jurisdiction; Rule 12, par. 3, p. 10 U. S. Supreme Court Rules; of right to file Brief (etc.) Rule 38, Par. 4, p. 31; Rule 41, par. 5, p. 34.

8. The said appellees and their said attorneys failed and neglected to file any joinder of the issues (Questions Involved). See pp. 1 to 7 of Appellant's Brief. (Rule 22, Pr. Act 1912.)

9. Par. 5 of Rule 26 of the Rules of Practice of this Court provide: 5. BRIEF OF APPELLEE OR RESPONDENT—CONTENTS. The brief of the appellee or respondent shall contain the following matter, under distinctive titles, arranged in the following order.

(a) A table of contents and a table of citations, the latter alphabetically arranged.

(b) A counter-statement of the questions involved conforming to the requirements of paragraph 3 (b) of this rule, if he disagrees with the statement of the appellant or petitioner.

(c) A counter-statement of the case conforming to the requirements of paragraph 3 (c) of this rule, if he disagrees with the statement of appellant or petitioner.

(d) An argument for the appellee or respondent, which shall conform to the requirements of paragraph 3 (d) of this rule. (e) . . .

All these said provisions or requirements have been disregarded by the said appellees and their attorneys to the wrong and injury of this plaintiff.

10. (a) The district Court was not justified in striking Counts 23 and 24 of the Complaint. Appellant's Answer to Appellees (Question No. 11. See p. 1 of their second Memorandum. By reference the Court is referred to Appellant's Argument on Question XX, pp. 78-79 of Appellant's Brief.

(b) The defendant, H. Collin Minton, Jr. has been and is privy to the general plan of the defendant, Utah Fuel Company. He became so when the said defendant-company confided to him the execution of the parts of the conspiracy set forth in Counts 23 and 24 of the Complaint. There has been a considerable body of judicial expressions to the effect that each conspirator is jointly and severally liable for all damages resulting from the conspiracy. Some of them are:

Lewis v. Ingram, 57 F. 2nd 463. The attorneys were found to be parties to the general plan, and it is undoubtedly true that each conspirator is jointly and severally liable for all damages resulting from the conspiracy. McCermott, C. J.; H. B. Merienelli v. United Booking Offices of America, 227 Fed. Rep. 165. Learned Hand, D. J. (9) The complaint is not bad for misjoinder; all the defendants are asserted to be privy to the general plan, and it does not matter the execution of different parts is confided to individuals. The rules regulating original conspiracies obtain in such cases. For other cases see Monopolies, Cent. Dig. Sec. 18; Dec. Dig. Sec. 28; XX. pp. 78-79 of Brief.

d. The defendant Utah Fuel Company procured the defendant H. Collin Minton, Jr. to carry into execution the conspiracy which it had theretofore carried on with the co-operation, aid and assistance of the other defendants. The Procurer. The defendant H. Collin Minton,

Jr., with full knowledge and complete notice as by him derived from the certification of the Record of the conspiracy, the Industrial Act of the State of Utah, and decisions thereon, for moneys paid and to be paid to him by the defendant Utah Fuel Company and controlled and controlling and Associated Corporations, undertook to carry into the United States District Court for the District of New Jersey and therein present the same to Judge Forman the conspiracy so theretofore carried on by the defendant company et als. as aforesaid. Procured or Perpetrator. Any general distinction between perpetration and procurement no longer obtains. Clark, C. J. In U. S. v. Silverman. See pp. 19-20 of Brief.

11. As to the Second Question which is set forth on page 1 of the Second Memorandum of Appellees the plaintiff says:

1. (a) By reference the Court is referred to par. 9 on pp. 4-5 of Appellant's first Motion to Strike the said first Memorandum.

(b) Plaintiff's Brief generally. (c) The exceptions provided in sections 113 to 118 of Title 28 U.S.C.A. are not the only exceptions to be found in the Code of the Laws of the United States. For instance: 1. See XI, pp. 48-49 of Appellant's Brief as filed in the present appeal.

2. Title 15 U.S.C.A. Sec. 15. C. E. Stevens Co. et al v. Foster & Kleiser Co. et al. 61 S. Ct. 210, Nov. 19, 20, 1940. Mr. Justice Roberts, 1. Sherman Anti Trust Act Sec's 1, 2, and 7, as superseded by Act Oct. 15, 1914, Sec. 4, 15 U.S.C.A. 1, 2, 15.; United States vs. Cooper Corporation et al. 61 S. Ct. Rep. 742. Mr. Justice Roberts:

The Sherman Act however, created new rights and remedies which are available only to those on whom they are conferred by the Act. Citing: Wilder Mfg. Co. v. Corn Products Refining Co., 236 U. S. 165, 174, 35 S. Ct. 398, 401, 59 L. Ed. 520. Ann. Cas. 1916A; Fleishman v. Welsbach Street Lighting Co., 240 U. S. 27, 29, 36 S. Ct. 233, 234, 60 L. Ed. 505; Gedes v. Annaconda Copper Mining Co., 254 U. S. 590, 41 S. Ct. 209, 210, 65 L. Ed. 425. On p. 746. It should be noted that sec. 1 of the Clayton Act again defined the word "person" exactly as it was defined by Sec. 8 of the Sherman Act and Sec. 4 again enacted that any person injured by a violation might recover treble damages together with a reasonable attorney's fee.

There has been a considerable body of judicial expressions to the effect that Sec. 7 authorizes an action for damages only by private suitors . . . Cases cited under foot note 14. Pedcock v. Harrington, 64 F. 821, 822; Lawenstien v. Evans, 69 F. 908, 911; Greer Mills & Co. v. Stoller; General Investment Co. v. Lake Shore & Michigan So. Ry. Co. 260 U. S. 261, 280; 43 S. Ct. 106, 116, 67 L. Ed. 244 and other cases: In the Wilder Mfg. Co. v. Corn etc. supra the Court says: The statute in express terms vested the Circuit (District) Court of the United States with jurisdiction to prevent and restrain violation of this act" and besides expressly conferred the amplest discretion in such courts to join such parties as might be deemed necessary, and to exert such remedies as would fully accomplish the purposes intended. Act of July 2, 1890, Chap. 647, 26 St. at L. 209, Comp. St. 1913, Sec. 8820.

3. Chapter CLXIX (169), Sec. 30 of the Act of Thirty-Ninth Congress. Sess. II (Sec. 103 of Title 28 U.S.C.A.) is another exception. See page 56 of Appellant's Brief.

4. The law found in section 729 of Title 28 U.S.C.A. is another exception and is as good law as that which is found in the Judiciary Acts of Mar. 3, 1887 et seq. See page 83 of Appellant's Brief.

5. The Interstate Commerce Act is another exception: Title 49, U.S.C.A. Transportation. Sections: 8. Liability for violation of Interstate Commerce Act. page 6558, U.S.C.A.; 9. Remedies of persons injured by violation of Interstate Commerce Act; Section 43. Action for damages not precluded by equitable proceedings to inforce law. The defendants in the present suit have had a "criminal" (this plaintiff) in the District of Columbia and wanted to transport him to Judge Ferdinand Erickson of the defendant Utah Fuel Company and to William H. Folland, and they caused him to be transported, and he was so by them transported under guard and by train from the District of Columbia to Salt Lake City, Utah, and by said guards he was delivered to said Judge Ferdinand Erickson and said William H. Folland, and by them he was dealt with in the manners, ways, means, and tactics set forth in the exhibits as photostated and filed in this Court. They further had a criminal (this plaintiff) in the State of Utah and wanted to deport him out of the United States of North America under guard. They went to work and put him on the train again his destination to end in his home in Greece on their own made fraud. See the Photostated Exhibits as filed in this Court. (Title 15 U.S.C.A. Sections 1 to 7, et seq.)

6. The incorporators of the defendant Utah Fuel Company have had plotted to defraud the United States of America of their revenue (Internal Revenue Act. Title 26 U.S.C.A.) They went to work and embodied their fraud

in the defendant company's Articles of Incorporation where they swear that the capital stock with which the corporation will commence business was to be $1500. (SICK).

Billions of Dollars worth of coal lands, coal veins, timbers, pastures, and what not. In order to carry on this said fraud it requires the doing away with any and all persons that shows sympathy for the United States Government and who would at any opportunity expose their said plot to the Courts. (Section 103 of Title 28 U.S.C.A.; Section 88 of Title 18 U.S.C.A.) This plaintiff will prove that he suffered all the sufferings he complains because of his daring stand and devotion to the Government of the United States of America from the day of the summer of 1907, when he stepped on their lands, to this day. (18 U.S.C.A. 88. Note 1.) Construction and Operation.— "Section 37 first appears as Sec. 30 of an Act to Amend existing laws relating to Internal Revenue, and for other purposes", enacted on March 2, 1867, 14 Stat. 471, and, except for an omitted-n not relevant provision, the section has continued from that time to this, in almost precisely its present form. It was carried into the revision the United States Statutes of 1873-4 as Sec. 5440 of Chapter 5, the title of which is Crimes against the Operation of the Government, while another chapter, chapter 7 of the revision, deals with Crimes against the Elective Franchise and Civil Rights of Citizens. Forty-two years after its first enactment the section was carried into the Criminal Code (in force on and after January 1st, 1910) where it now appears as section 37 again in a chapter now chapter 4, devoted to "Offenses against the Operation of the Government", while Chapter 3 of the Code deals with "Offenses against the Elective Franchise and Civil Rights of Citizens" . . . United States vs. Gradwell, 243 U. S. 476, 37 S. Ct. 407, 61 L. Ed. 857.

See also Removal of Causes. Sections: 71, 74, 75, and 77 of Title 28 U.S.C.A. See pp. 6-7 of plaintiff's first Motion to Strike Appellees' first Memorandum.

12. As to the Third Question set forth on page one (1) of Appellees' Second Memorandum regarding the Bamberger Coal Company the said attorneys cannot now be heard because their said attempt falsifies the record of the case as well as the Decree of the District Court. See the Stenographic Transcript of the hearing on plaintiff's Motion of June 10, 1940. Page two. THE COURT: Any opposition?

THE CLERK: Any Body here in opposition? (No Answer.)

13. The letter printed on pp. 4-5-6 of said second Memorandum of Appellees is not and never was a part of the Record and shows how the said attorneys prey upon the judges to help them obstruct and impede the due administration of justice by appealing to their conscience (Note 151 on page 10a of Appellant's Brief.)

Under date of April 22, 1942, the defendant H. Collin Minton, Jr., wrote another letter to Hon. John Biggs of this Court saying My Dear Judge Biggs . . . the proper method of applying for relief is through appeal. He now says: Ergo, this Court has no jurisdiction.

14. The quotation from the Opinion of the District Court filed March 15, 1938, has no bearing on the present Complaint. That Complaint was that and the present Complaint is the present.

15. The Notice of Motion set forth on pp. 7-8-9 and 10 of Appellees' Second Memorandum is now of no avail to

the appellees. Were they aggrieved by the Decree of the District Court they should have had appealed therefrom to this Court. See Head Note of Statement of Acceptance on the unnumbered page head note to the Questions Involved page one of Appellant's Brief. By reference the facts and statutes set forth on the unnumbered page are repeated here.

And having failed to join issue as provided by par. 5 (a), (b), (c), (d), and (e) of Rule 26 of the Rules of Practice of this Court, they cannot now be heard to moan on their own deception.

The said Second Memorandum of Appellees and their said attorneys is an unusual and objectionable proceeding as will be readily seen by this Court. Each and every one of the grounds set forth above constitute sufficient basis for an Order of this Court striking the same from the Record.

Respectfully submitted by

NICHOLAS J. CURTIS, LL.B.,
Plaintiff-Appellant Appearing in Person,
Post Office Box 972,
Trenton, New Jersey.
Room at No. 7 N. Stockton Street,
Trenton, New Jersey.

To H. Collin Minton, Jr.
and H. Brua Campbell,
attorneys of Record,
Trenton Trust Bldg., Trenton, N. J.

Dated October 6, 1942.

TABLE OF CONTENTS

PAGE

Counter-Statement of Question Involved 1

Statement of the Case 2

Argument of Appellees 3

Appendix 4
Docket Entries 4
Clerk's Certificate showing improper service without District of New Jersey upon twenty-three defendants 8

On Appeal from hearings before HONORABLE THOMAS GLYNN WALKER, Judge of the United States District Court for the District of New Jersey on which decisions were reserved.

MEMORANDUM OF APPELLEES

COUNTER-STATEMENT OF QUESTION INVOLVED

Can this Court reverse or modify the action of the District Court in reserving decision on application of plaintiff

for default judgment against stated defendants who have been improperly served outside of the District?

STATEMENT OF THE CASE

The principal defendant and real object of the plaintiff's attack is, of course, the Utah Fuel Company. The some twenty-odd others named as defendants are allegedly associates and agents of Utah Fuel Company, who participated in the alleged conspiracy against the plaintiff. Insofar as Utah Fuel Company, the principal in this litigation, is concerned, the only defendants who were properly served within the State are Utah Fuel Company and H. Collin Minton, Jr., and a motion to dismiss the complaint was made in their names for the "defendant-company and its agents and associates." The fact that the phrase "defendant-company and its agents and associates" is set out six times in the motion to dismiss conclusively proves that it was filed for the twenty-odd improperly-served alleged agents and associates as well as for Utah Fuel Company, the principal, and H. Collin Minton, Jr.

(The Clerk's Certificate attached hereto shows that twenty-three named defendants who allegedly acted for Utah Fuel Company were served outside the District of New Jersey contrary to the provision of Rule 4 of the Federal Rules of Civil Proceedings.)

Subsequent to the drafting of the motion to dismiss, on special instruction from the attorney in Utah, Mr. Minton drafted a special appearance in behalf of Dr. Frederick Dunn, Dr. A. C. Callister, Dr. D. E. Smith, Charles E. Maybe and W. D. Sutton to quash service of the subpoena

made upon said defendants. The Court, however, was advised by Mr. Minton, that Mr. Minton represented all defendants not represented by other counsel, which includes all of the appellees named in the caption of this cause.

3

ARGUMENT OF APPELLEES

The basis of the motion to strike the complaint is due to the impossibility of framing an answer to the complaint by reason of its vague, indefinite, incoherent and unrelated allegations and scandalous nature. The Court not having ruled on the application to strike the complaint, the matter was properly held in abeyance. In other words, on account of the factual basis for the motion made in the District Court, it would be impossible to prepare answers.

The appendix attached hereto indicates that decision was reserved on all motions of both plaintiff and defendants.

It is submitted therefore that this appeal should not be considered by this Court.

Respectfully submitted,

H. COLLIN MINTON, JR.,
Attorney for Appellees.

H. BRUA CAMPBELL,
Of Counsel.

UNITED STATES CIRCUIT COURT OF APPEALS
WITHIN AND FOR THE THIRD CIRCUIT.

NICHOLAS J. CURTIS,
Plaintiff-Appellant,
vs.
UTAH FUEL COMPANY, et als.,
Defendant-Appellees.

CASE NO. 8027.

MEMORANDUM Supplementing the Grounds of the Two Motions to Strike the Two Memorandums Herein Filed by the Appellees, and, or, Their Attorneys.

Nicholas J. Curtis, LL.B.,
Plaintiff-Appellant Appearing
in Person, P. O. Box 972,
Trenton, N. J.

Two Copies (Photostated) of Title 24 of the Revised Statutes of the United States are to be found in the Original and in the 1st copy of this Memorandum.

Nicholas J. Curtis,
Plaintiff.

Memorandum

To:

H. Collin Minton, Jr.,
Defendant and Attorney of Record,
Trenton Trust Bldg.,
Trenton, New Jersey.

I certify that I served copy of the herein Memorandum by Registered mail.

Nicholas J. Curtis.

Oct. 17, 1942.
Receipt for Reg. Art. No. 8639.

Received and Filed
Oct. 20, 1942
WILLIAM P. ROWLAND,
Clerk.

TITLE XXIV.

CIVIL RIGHTS.

Sec.

1977. Equal rights under the law.
1978. Rights of citizens in respect to real and personal property.
1979. Civil action for deprivation of rights.
1980. Conspiracy.
1981. Action for neglect to prevent conspiracy.
1982. District attorney, &c., to prosecute.
1983. Commissioners.
1984. They may appoint persons to execute warrants, &c.
1985. Marshals to obey precepts, &c.
1986. Fees of district attorney, &c.
1987. Of persons appointed to execute process, &c.

1988. Speedy trial.
1989. Aid of the military and naval forces.
1990. Peonage abolished.
1991. Foregoing section, how enforced.

Equal rights under the law.
31 May, 1870, c. 114, s. 16, v. 16, p. 144.
1 Mar., 1875, c. 114, s. 1, v. 18, p. 336.

SEC. 1977. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. [See §858.]

Rights of citizens in respect
to real and personal property.
9 April, 1866, c. 31, s. 1, v. 14, p. 27.

SEC. 1978. All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

Civil action for deprivation
of rights.
20 April, 1871, c. 22, s. 1, v. 17, p. 13.

SEC. 1979. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected any Citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall

be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. [See §§ 563, 629.]

Conspiracy.
31 July, 1861, c. 33, v. 12, p. 284.
20 April, 1871, c. 22, s. 2, v. 17, p. 13.
1 Mar., 1875, c. 114, s. 2, v. 18, p. 336.

SEC. 1980. First. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Second. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any

State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Third. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. [See §§ 563, 629.]

Action for neglect to prevent conspiracy.
20 April, 1871, c. 22, s. 6, v. 17, p. 15.

SEC. 1981. Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued. [See § 629.]

District attorney, &c., to prosecute.
9 April, 1866, c. 31, s. 4, v. 14, p. 28.
31 May 1870, c. 114, s. 9, v. 16, p. 142.

SEC. 1982. The district attorneys, marshals, and deputy marshals, the commissioners appointed by the circuit and territorial courts, with power to arrest, imprison, or bail offenders, and every other officer who is especially empowered by the President, are authorized and required, at the expense of the United States, to institute prosecutions against all persons violating any of the provisions of chapter seven of the Title "CRIMES," and to cause such persons to be arrested, and imprisoned or bailed, for trial before

the court of the United States or the territorial court having cognizance of the offense.

Commissioners.
9 April, 1866, c. 13, s. 4, v. 14, p. 28.
31 May, 1870, c. 114, s. 9, v. 16, p. 142.

SEC. 1983. The circuit courts of the United States and the district courts of the Territories, from time to time, shall increase the number of commissioners, so as to afford a speedy and convenient means for the arrest and examination of persons charged with the crimes referred to in the preceding section; and such commissioners are authorized and required to exercise all the powers and duties conferred on them herein with regard to such offenses in like manner as they are authorized by law to exercise with regard to other offenses against the laws of the United States.

They may appoint persons
to execute warrants, &c.
9 April, 1866, c. 31, s. 5, v. 14, p. 28.
31 May, 1870, c. 114, s. 10, v. 16, p. 142.

SEC. 1984. The commissioners authorized to be appointed by the preceding section are empowered, within their respective counties, to appoint, in writing, under their hands, one or more suitable persons, from time to time, who shall execute all such warrants or other process as the commissioners may issue in the lawful performance of their duties, and the persons so appointed shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as

UNITED STATES CIRCUIT COURT OF APPEALS.
THIRD CIRCUIT.

NICHOLAS J. CURTIS,
Plaintiff-Appellant,

vs.

UTAH FUEL COMPANY, et als.,
Defendant-Appellees.

CASE NO. 8027.

Supplementing the Grounds of the Two Motions to Strike the Two Memorandums herein Filed by the Appellees and or, Their Attorneys.

Nicholas J. Curtis, LL.B.,
Plaintiff Appellant Appearing
in Person, P. O. Box 972,
Trenton, New Jersey.

TO THE HONORABLE JUDGES OF THE CIRCUIT COURT OF APPEALS WITHIN AND FOR THE THIRD CIRCUIT.

Supplementing the brief statements of the grounds of the two motions to strike the two memorandums herein filed by the appellees and their attorneys, the plaintiff further shows unto your honors THAT THE DISTRICT COURT BASED ITS RULINGS ON Motions No. 2, and No. 3 on, to-wit: FORTY-NINTH CONGRESS. Sess. II,

Chap. Mar. 3, 1887, Sec. 1 . . .; and no civil suit shall be brought before either of said courts (Circuit and District) against any person by any original process of proceeding in any other district than that whereof he is an inhabitant; . . .

2. The district court, the appellees, and their attorneys stand, to wit: As to the second question (see page one of their Memorandum), the best argument is the ruling of the District Court, which, for convenience, is herewith repeated. (par. 7 on p. 2)

3. Section 5 of the said Act contains, to wit:

Sec. 5. That nothing in this Act shall be held, deemed, or construed to repeal or affect any jurisdiction or right mentioned either in Sections six hundred and forty-one, or six hundred and forty-two, or in six hundred and forty-three, or in seven hundred and twenty-two, or in title Twenty-four of the (R. S.) Revised Statute of the United States, or mentioned in section eight of the Act of Congress of which this Act is an amendment, or in the Act of Congress approved March first, eighteen hundred and seventy-five, entitled "An Act to protect all citizens in their civil or legal rights."

4. Sections 641, 642, and 643 mentioned in said section 5 are devoted to the removal of causes (Title 28 U.S.C.A. 71, 72, 73, 74.)

5. Section 722 mentioned in said section 5 is devoted to proceedings in vindication of civil rights (Title 28 U.S.C.A. Section 729.) See also page 3, paragraph b. of the complaint.

6. Title 24 of the Revised Statutes follows: (Please see the two photostated copies as annexed to the Original and

first carbon copy and the Title itself in the Revised Statutes.

Sec. 1977 of the R. S. is in Tit. 8 U.S.C.A. Sec. 41.
Sec. 1978 of the R. S. is in Tit. 8, U.S.C.A. Sec. 42.
Sec. 1979 of the R. S. is in Tit. 8, U.S.C.A. Sec. 43.
Sec. 1980 of the R. S. is in Tit. 8, U.S.C.A. Sec. 47.

It follows that the provisions, to-wit: And no civil suit shall be brought before either of said courts (Circuit and District) against any person by any original process of proceeding in any other district than that whereof he is an inhabitant; . . . shall not be held, deemed, or construed to repeal or affect the federal jurisdiction of the suit before this Court, because at the outset of the Complaint (page 3, paragraph b.) the plaintiff avers and cites that the action arises under the constitution of the United States and sets forth the particular articles invoked; U. S. C. A. Title 8, Chap. 3, Sections 41, 43, 47 (1), (2), (3). See the paragraph State of Tennessee v. Union & Planters Bank, 152 U. S. 511, 38 L. Ed. 511, 14 S. C. R. 954, on page 511, 2nd Col. the Supreme Court says: The Acts of 1887, and 1888, indeed, contain special provisions as to particular kinds of cases arising under the Constitution or laws of the United States. By section 5, nothing in this Act is to repeal or affect any jurisdiction or right mentioned in sections 641, 642, 643, 722, or title 24 of the Revised Statutes or the act of March 1, 1875, Chap. 114, all of which relate to suits concerning civil rights. See also: 722 R. S. U. S. v. Eagan, 30 Fed. 608; Malone v. Richmond & D. R. Co. Note. 35 Fed. 625, Note on pp. 629, 630, 631, 632, (Sec. 5 is here) 633; Goddard et al v. Mailer, et al. C.C.S.D. N. Y.; U. S. v. Mitchell, 136 Fed. 896.

It follows that the rulings of the district court and the defenses interposed by the appellees in this Court, and by

the defendants in the district court are utterly wrong, and shall not be held, deemed, or construed to affect the rights of the plaintiff in the suit.

The law of conspiracy (Section 30 of the Act of the Thirty-ninth Congress. Sess. II, Chap. CLXIX) 169, see page 56 of the Brief. See and read in paragraph 6 just above here. Sec. 47 of Tit. 8 U.S.C.A.; Sec. 88 of Tit. 18 U.S.C.A. Sec. 550 of the same title; Section 103 of Title 28 U.S.C.A.; and the several Articles of the United States Constitution cited in paragraph b. on page three of the Complaint apply to and govern the suit before this Court; and section 729 (R. S. 722) of Tit. 28 U.S.C.A. apparently authorizes the District Court to fall back upon the Common Law if necessary. Inch, J. District Court of the U. S. E. D. of New York, April 15, 1935, U. S. v. Olmstead, 7 Fed. 2nd, 756, and cases cited under (1); U. S. v. Wells, 163 F. 313. (R. S. Sec. 722; U.S.C.A. Sec. 729, of Tit. 28— jurisdiction . . . shall be exercised and enforced in conformity with the laws of the United States, . . . — .

7. After the statutory time has expired the right to grant an appeal (or leave to file pleas to the jurisdiction and pleas to dismiss the appeal) is extinguished. Bingham, C. J. in Standard Acc. Ins. Co. v. United States, for use and benefit of Stringville. C. C. A. 1st C. Mar. 2, 1939, 103 F. 2d. 501, (3) on page 503, citing: Hartford Accident Company v. Bunn, 285 U. S. 169, 52 S. Ct. 354, 76 L. Ed. 685. Mr. Justice McReynolds, on page 356.

• • • Passage of the three months period extinguished the right to grant an appeal. Citing: Rust Land & Lumber Co. v. Jackson, 250 U. S. 71, 76, 39 S. Ct. 424, 63 L. Ed. 250; Toledo Scale Co. v. Computing Scale Co. 261 U. S. 399.

8. • • • Passage • • • of the 20 days period for the appellees to file their Briefs extinguished the right to file

Briefs or pleas to the jurisdiction and pleas to dismiss the appeal without having first complied with requirements of paragraph 5, (a), (b), (c), (d), (e) of Rule 26, and par. 1 of Rule 27 of the Rules of Practice and Procedure of this Court. (Rules 26 and 27 C. C. A. 3rd C.).

9. The appellees and their attorneys can be heard before the Supreme Court and the Circuit Court of Appeals only in support of the decree which was rendered. Hughes Fed. Pr. Sec. 5611. Citing: Fitchie v. Brown 211 U. S. 321, 29 S. Ct. 106, 53 L. Ed. 202; Peoria & P. U. Ry. Co. v. United States, 263 U. S. 528, 44 S. Ct. 194, 68 L. Ed. 427.

10. An appellee who does not take an appeal cannot confer jurisdiction upon an appellate Court to consider on review decisions adverse to him upon questions suggested by an assignment, or by an argument of cross errors, nor can he be heard upon such questions but only in support of the order, decree or judgment below. Hughes's Fed. Pr. Sec. 5611, citing: Pauly Jail Bldg. & Mfg. Co. v. Hemphill County, 62 F. 698; Board of Com's of Shawnee County Kan. v. Hurley, 169 F. 762; Cooper v. Jewett, 233 F. 618; Lasswell Land & Lumber Co. v. Lee Wilson & Co., 236 F. 322, Cer. Den. 242 U. S. 652, 37 S. Ct. 245, 61 L. Ed. 546; Henna v. Saurl & Subira, 237 F. 145; Rogers v. Marion County Lumber Corp., 257 F. 676.

11. They cannot be heard to complain of the court below for its failure to sustain a motion to dismiss the cause. Southern Pine Lumber Co. v. Ward, 208 U. S. 126, 25 S. Ct. 239, 52 L. Ed. 420, affirming 16 Okl. 131, 85 P. 459. (Appellees' Memorandum; Counter Statement of the case, pages 2-3; Their Motion in the Court below as set forth in pages 7, 8, 9, and 10 of said Memorandum.)

It is earnestly and respectfully insisted by the plaintiff that the Ruling of the Court below on Motion No. 2, and the Ruling of the same Court on Motion No. 3 are utterly erroneous, null, and void.

NICHOLAS J. CURTIS,
Plaintiff.

HUGHES FEDERAL PRACTICE. Vol. 17. JURISDICTION. FEDERAL QUESTIONS, SEC. 19598. METHOD OF STATING JURISDICTION . . . 1.

Proper pleading of a Federal question requires that "it must appear on the record, by a statement in legal and logical form, such as is required in good pleading, that the suit is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction of the Constitution or some law or treaty of the United States." (Western Union Telegraph Co. v. Ann Arbor R. Co., 178 U. S. 239, 20 S. Ct. 867, 44 L. Ed. 1052.)

As to what constitutes a case "arising under the Constitution or laws of the United States," the test is still the time-honored definition of Chief Justice Marshal: "A case * * * may truly be said to arise under the Constitution or a law of the United States, whenever its correct decision depends upon the construction of either." Cohens v. Virginia, 6 Wheat. 264, 379, 5 L. Ed. 257.

Sec. 19599. Form of Jurisdictional Statement. Appendix of Forms. Form 2. (on page 300 of Vol. 17) . . . Thus, Form 2 attached to the present rules by the Committee shows that where jurisdiction is based upon the existence of a Federal question it is unnecessary, at least in so far as the requirements of Rule 8 (a) (1) are concerned, to allege the ultimate facts. It is sufficient in a case of this character to point to the particular act of Congress involved and show that its direct construction or application is in question "as hereinafter more fully appears". Citing Form 2 Appendix of Forms.

As to the Counts and Paragraphs of the Complaint. Federal Rule 10. Form of Pleadings. Hughe's Federal Practice. Sec. 20118. See:

Gerli v. Silk Ass'n of America et al. 36 Fed. 2d. 959 (1), (2-5) first and second paragraphs and cases cited therein; Westmoreland Asbestos Co. v. Johns-Manville Corp., 30 Fed. Supp. 389, (1-4) citing Gerli case supra;

Kuhn v. Pacific Mutual Life Ins. Co. of California, 37 F. Supp. 100, (6) on page 102-3: . . . it is at once apparent from an examination of the plaintiff's complaint, there are several causes of action to recover divers sums, predicated upon different circumstances, and each is a separate claim and cause of action;

Ingenuities Corp. of American v. Trau, 1 F.R.D. 578, (2);

Sapery v. United American Metals Corp. et al., 1 F.R.D. 106, (1) . . . the various claims made against them and the various transactions set forth are in reality parts of one alleged conspiracy and therefore as to these parties there is no necessity of a separate statement;

Lowe et al. v. Consolidated Edison Co., Inc., et al., 1 F.R.D. 559, (1), (2).

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 7929.

NICHOLAS J. CURTIS,
Petitioner,

vs.

HON. THOMAS GLYNN WALKER and HON. WILLIAM F. SMITH, United States District Judges, District of New Jersey,
Respondents.

DOCKET ENTRIES.

Jan. 23, 1942 Petition for Writ of Mandamus filed
Jan. 23, 1942 Brief & Appendix for Petitioner filed
Jan. 23, 1942 Appearances of counsel entered
Jan. 26, 1942 Notice of Service of Appellants Petition filed
Jan. 30, 1942 Transcript of Record from District Court filed
Jan. 30, 1942 Transfer to Argument List
Feb. 6, 1942 Supplement to Petitioner's Brief filed
Feb. 6, 1942 Application for Enlargement of time within which to file Assignment of Errors & Bond on Appeal filed

Feb. 9, 1942 Order extending time for Assignment of Errors etc to May 10, 1942 filed

April 17, 1942 Motion to set case for hearing filed

April 21, 1942 Heard on Motion to Set case for hearing, Coram: Biggs, Jones & Goodrich, JJ

April 21, 1942 Proof of Service of Notice of Motion to Set Cause for Hearing filed

April 30, 1942 Opinion Per Curiam filed

April 30, 1942 Order Denying Petition for Issuancce of Writ of Mandamus filed

April 30, 1942 Copies of opinion to counsel

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 7525

NICHOLAS J. CURTIS,
Plaintiff-Appellant,
vs.
UTAH FUEL COMPANY, et al.,
Defendants-Appellees.

DOCKET ENTRIES

Aug. 19 1940 Notice of Appeal and of Motion to Waive Security for Costs filed
Aug. 19 1940 Appearances of counsel entered
Aug. 19 1940 Petition for Leave to Appeal Without Giving Security for Costs filed
Aug. 19 1940 Praecipe of Appellant filed
Sept. 21 1940 Transfer to Argument List
Oct. 2 1940 Brief for Appellant filed
Oct. 2 1940 Transcript of Record from District Court filed
Oct. 2 1940 Copies of Record from District Court filed
Oct. 19 1940 Brief for Appellees & Appendix filed
Nov. 1 1940 Reply brief for Appellant filed
Nov. 1 1940 Memorandum and Parts of Cases Material to the service of Process filed

Nov. 1 1940 Certificate of Service of Appellants brief filed
Nov. 2 1940 Notice of filing typed Memo Quoting Parts of Cases Material to Service of Summons filed
Nov. 7 1940 Argued Coram Biggs, Maris and Goodrich JJ.
Dec. 14 1940 Opinion Per Curiam filed
Dec. 14 1940 Order Dismissing Appeal etc. filed
Dec. 14 1940 Copies of Opinion to counsel
Feb. 8 1941 Certified Copy of Record & Proceedings to Nicholas J. Curtis
Mar. 25 1941 Certificate of Filing Petition for Certiorari in the Supreme Court filed
May 1 1941 Certified Copy of Supreme Court Order Denying Petition for Certiorari filed
May 15 1941 Mandate issued
May 29 1941 Copy of Mandate to Nicholas J. Curtis

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 8027

NICHOLAS J. CURTIS,
Plaintiff-Appellant,
vs.
UTAH FUEL COMPANY, et al.,
Defendants-Appellees.

DOCKET ENTRIES

May 8 1942 Notice of Appeal filed
May 8 1942 Appearance of counsel entered

May 8 1942 Petition to extend size of Appellants Brief & questions involved filed

May 14 1942 Statement of the Parts of the Record the Appellant Proposes to Print in Appendix filed

May 29 1942 Memorandum of Appellant on Appellees Certificate of incorporation filed

May 29 1942 Application to extend time for filing Appellants Brief filed

May 29 1942 Order extending time for filing Appellants brief to August 1, 1942 filed

July 6 1942 Brief for Appellant & Appendix filed

July 30 1942 Proof of Service of Appellants Brief filed

Aug. 31 1942 Certified Copy of Exhibits M and N filed

Aug. 31 1942 Statement of Appellants Costs for Photostats for Record filed

Sept. 22 1942 Memorandum of Appellees filed

Sept. 22 1942 Affidavit of Service of Appellees Memorandum filed

Sept. 22 1942 Praecipe for appearance of Grover A. Giles for Appellees filed

Sept. 22 1942 Praecipe for appearance of Zar E. Hays for Appellees filed

Sept. 24 1942 Transfer to Argument List

Oct. 6 1942 Notice of Motion & Motion to strike the Memo. of the Appellees filed

Oct. 14 1942 Notice of Motion & Motion to strike Second of the Appellees filed

Oct. 14 1942 Certificate of Service of Copies of Appellants Two Motions to Strike filed

Oct. 15 1942 Memorandum of Appellees filed (2nd)

Oct. 20 1942 Memorandum of Appellant in Support of Motions to Strike Memos. of Appellee filed

Oct. 20 1942 Proceedings of June 10, 1940 before Judge Walker filed

Oct. 20 1942 Certified photostat copies of certain exhibits & papers filed

Oct. 20 1942 List of Index of Exhibits etc. filed

Oct. 22 1942 Argued Coram: Maris, Jones and Goodrich JJ.

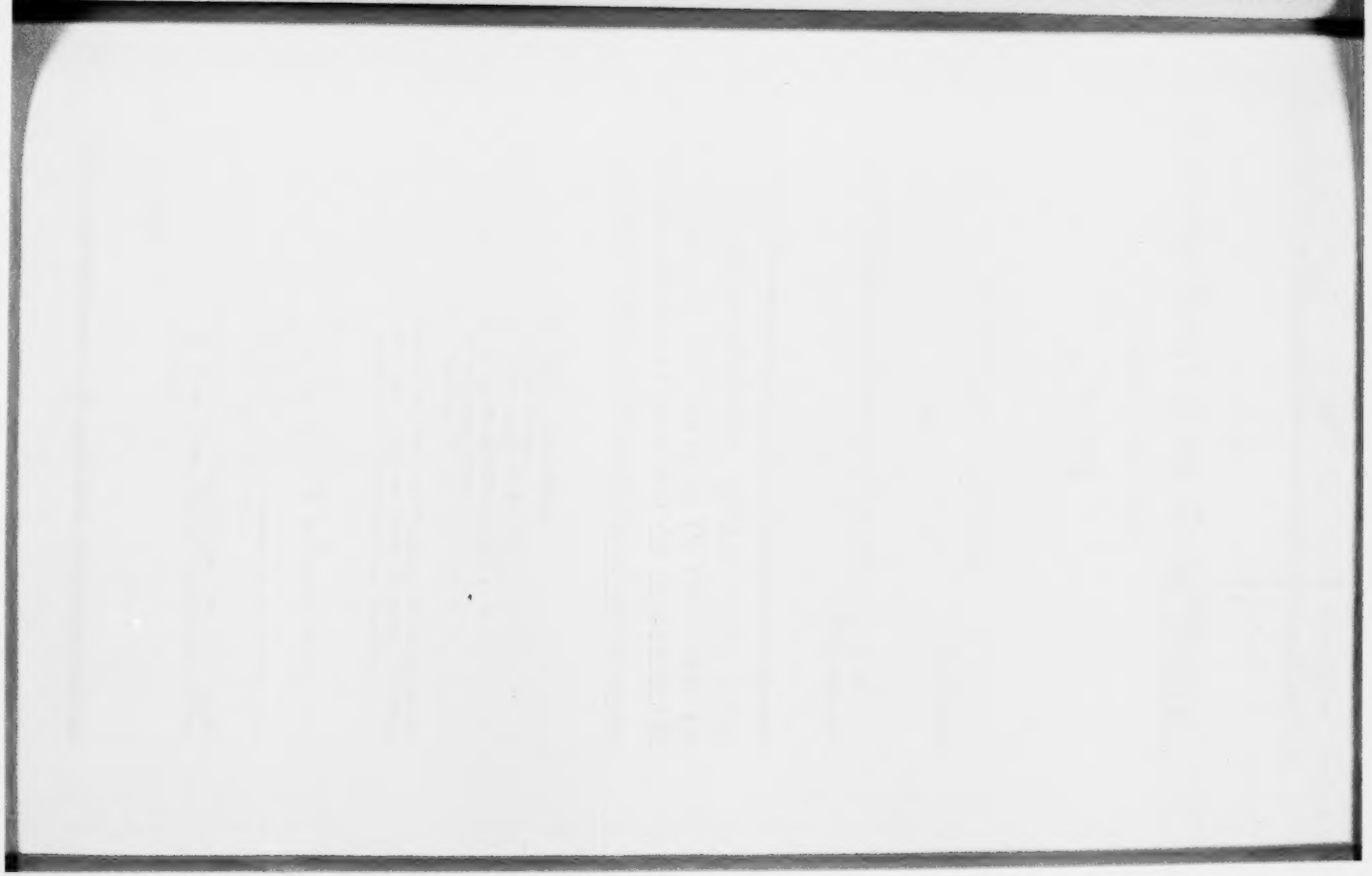
Oct. 22 1942 Order denying Motions of Appellant to strike the Memoranda filed by certain Appellees filed

Oct. 22 1942 Copies of Order Denying Motions to counsel

Dec. 7 1942 Opinion Per Curiam filed

Dec. 7 1942 Order Affirming Orders Appealed from filed

Dec. 7 1942 Copy of Opinion to N. J. Curtis



MAR 15 1943

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. 779

NICHOLAS J. CURTIS,

Petitioner,

vs.

UTAH FUEL COMPANY, a corporation, *et al.*,

Respondents.

BRIEF OF RESPONDENTS, UTAH FUEL COMPANY, *ET AL.*, IN OPPOSITION TO PETITION OF NICHOLAS J. CURTIS FOR WRIT OF CERTIORARI

H. BRUA CAMPBELL,
40 Wall Street,
New York, N. Y.

H. COLLIN MINTON, JR.,
28 W. State Street,
Trenton, N. J.

Counsel for Utah Fuel Company, H. Collin Minton, Jr. and Bamberger Coal Company, appearing specially for Bamberger Coal Company.

GROVER A. GILES,
Attorney General of the State of Utah,

ZAR E. HAYES,
Assistant Attorney General of the State of Utah,
Salt Lake City, Utah.

Counsel for Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey and William D. Sutton.

March 12, 1943.

INDEX

PAGE

Questions Involved 1

Counter Statement 2

Table of Cases

Crabtree v. *Steele*, 115 N. W. 593 (Iowa)..... 4

Hamilton-Brown Shoe Co. v. *Wolf Brothers & Co.*, 240 U. S. 251..... 2

Statutes and Rules of Court

28 U. S. C. A., Sec. 347..... 2

Revised Rules of the Supreme Court of the United States, adopted February 13, 1939:

Rule 38, Subdivisions 2, 3, 5(a), (b), (c)..... 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942

No. .....

NICHOLAS J. CURTIS,

Petitioner,

vs.

UTAH FUEL COMPANY, a corporation, *et al.*,

Respondents.

BRIEF OF RESPONDENTS, UTAH FUEL COMPANY, *ET AL.*, IN OPPOSITION TO PETITION OF NICHOLAS J. CURTIS FOR WRIT OF CERTIORARI

Questions Involved

1. Is the petition defective in being abortive and violative of the laws of the United States and the Rules of this Court?

2. On the merits, did the Circuit Court of Appeals act properly in affirming the action of the District Court in granting the motion to strike counts Twenty-three and Twenty-four of the complaint?

3. On the merits, did the Circuit Court of Appeals act properly in affirming the action of the District Court in

granting the motion to quash the service of summons on Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey and William D. Sutton?

4. On the merits, did the Circuit Court of Appeals act properly in affirming the action of the District Court in refusing to substitute Bamberger Coal Company in the place and stead of Simon Bamberger, deceased, and further in refusing to enter a default judgment against the Bamberger Coal Company?

Counter Statement

Respondents respectfully request the denial of a Writ of Certiorari in this cause upon the following grounds:

1. The petition is abortive in that no final decree has been entered by the Circuit Court of Appeals for the Third Circuit. (28 U. S. C. A., Sec. 347; *Hamilton-Brown Shoe Co.* v. *Wolf Brothers & Co,* 240 U. S. 251.)

2. The Rules of this Court, and particularly Rule 38, Subdivision 5(a), (b) and (c), afford no proper basis for the petition.

3. The petition in form and contents violates the provisions of Rule 38, Subdivision 2, of this Court.

4. The petitioner has failed to serve counsel for the respondents with a notice of the filing of the petition, as required by Rule 38, Subdivision 3, of this Court.

5. An examination of the record served upon respondents does not disclose a copy of the original complaint.

Respondents therefore quote counts Twenty-three and Twenty-four of the Complaint, with the suggestion that a mere reading of these counts will reveal sufficient basis for the action of the District Court as affirmed by the Circuit Court of Appeals:

"TWENTY-THIRD COUNT.

Paragraph Forty: For the 23rd Count the plaintiff alleges and says:

To further carry out and consummate the object of the conspiracy charged in paragraph 12 of this complaint, and as a part thereof, in the month of November, 1937, in the City of Trenton, and State of New Jersey, the defendant Utah Fuel Company, its officers and agents, each with the knowledge of the object of the conspiracies theretofore conceived, waged and carried on by them entered into a certain agreement, contract or conspiracy with the law firm of Minton & Rogers, and especially with H. Collin Minton, Jr., whose law offices are located at the Trenton Trust Bldg., in the City of Trenton and State of New Jersey, to unduly, corruptly, wilfully, deliberately and maliciously renew, reopen and repeat; and cause the same to be renewed, reopened and repeated, the false, wanton and malicious prosecutions and false, malicious and martyric imprisonment as it set out and alleged above in this complaint so made against the life, liberty and property of the plaintiff."

"TWENTY-FOURTH COUNT.

Paragraph Forty-one: For the 24th Count the plaintiff alleges and says:

In further pursuance of the said agreement, contract or conspiracy charged in the above Count 23rd hereof, and as a part thereof the said H. Collin Minton, Jr., of the said law firm of Minton & Rogers, on or about the 11th day of December, 1937, in the City

of Trenton, State of New Jersey, in the court room of the United States District Court for the District of New Jersey, before the Honorable Phillip Forman, United States District Judge, sitting as a court for the hearing of motions, at the opening of its, Utah Fuel Company's, motion to dismiss the first complaint in this court against it, did, wilfully, deliberately, wantonly and fraudulently whispered to the Court and renewed, re-repeated and restated the following charges, to wit:

> We hold that he is not well yet; you can see him how he is sitting. He is not well yet but he practiced fraud and got out. The certificate he is holding is false because it was given to him to enable him to get back to his home but he refused to go after he got out. He is not well yet but we do not want to prosecute him at this time. He suffered enough. All we want at this time is to dismiss this suit and allow him to go on. He is rich, and they have business at Athens. We gave his brother treatment but he refused to take it and went and hired private doctors. And the like, and thereby prevented or hindered the said U. S. District Court from giving or securing to this plaintiff the equal protection of the laws; and the equal benefits of the laws and the proceedings so had before said Court; and deprived the plaintiff of the equal privileges and immunities under the laws."

6. Assuming that the bill of complaint or declaration be before this Court in conjunction with the petition, we respectfully refer the Court to the following excerpt from the opinion of the Supreme Court of Iowa in *Crabtree* v. *Steele,* 115 N. W. 593:

> "Having read the said petition, motions and demurrers, this Court is of the opinion that the bulk of said petition is a confused mass of allegations which bear no relation to each other. They are im-

> pertinent and irrelevant, scandalous in their nature, and the whole petition bears upon its face evidence that it was intended to villify and abuse the defendants, rather than a lawyer-like effort to set forth a legitimate cause of action."

Furthermore, in an opinion filed March 15, 1938, by the District Court of New Jersey in a cause between the same parties herein, which opinion was adopted by the Circuit Court of Appeals for the Third Circuit, it was stated:

> "The whole complaint is prolix, verbose and incoherent. Making all due allowance for the fact that the plaintiff is not a member of any bar (although he subscribes himself a bachelor of law) the document on its face fails to disclose any cause of action against the defendants herein."

7. The best answer to question 3 is found in the ruling of the District Court, which for convenience is herewith repeated:

> "Except as provided in Sections 113 to 118 of Title 28, U. S. C. A., no civil suit shall be brought in any district court against any person by any civil process or proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suits shall be brought only in the district of the residence of either the plaintiff or the defendant.
>
> "The first provision has been violated because the plaintiff has attempted to bring the action in question in the district (New Jersey) where he says he resides, and the second provision has been violated because where jurisdiction rests on diverse state citizenship only, the suit instituted in the residence of the plaintiff can effect nothing unless he is able there to secure the service of process on the defendants.

"The motion is granted and service of summons on Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Maybe (Charles R. Mabey) and William D. Sutton is quashed."

8. With respect to the Bamberger Coal Company, the docket does not show that United States District Judge WALKER ever ruled upon the application to substitute Bamberger Coal Company in the place and stead of Simon Bamberger, deceased. The Appellate Court therefore had no jurisdiction.

Accordingly, we urge that the petition for Writ of Certiorari asked by petitioner be denied as unwarranted by the usages of this Court.

Respectfully submitted,

H. BRUA CAMPBELL,
H. COLLIN MINTON, JR.,

Counsel for Utah Fuel Company, H. Collin Minton, Jr. and Bamberger Coal Company, appearing specially for Bamberger Coal Company.

GROVER A. GILES,
Attorney General of the State of Utah,

ZAR E. HAYES,
Assistant Attorney General of the State of Utah,

Counsel for Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey and William D. Sutton.

March 12, 1943.

(3)

Office - Supreme Court, U. S.
MAR 20 1943
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

WASHINGTON, D. C.

Case No. 779.

NICHOLAS J. CURTIS,

Petitioner,

vs.

UTAH FUEL COMPANY, ET ALS.,

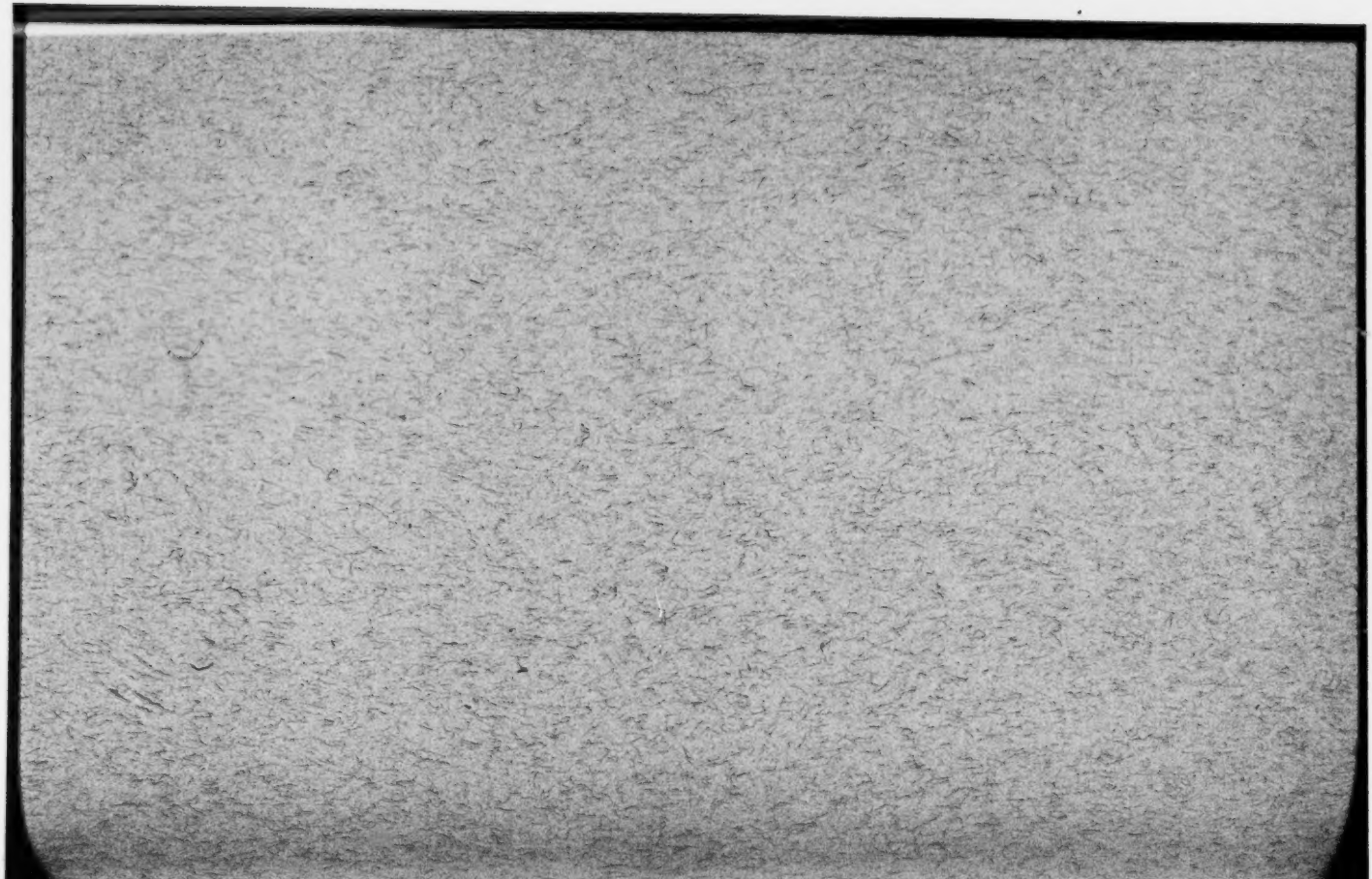
Respondents.

REPLY BRIEF ON PETITION FOR WRIT OF CERTIORARI.

NICHOLAS J. CURTIS, LL.B.,
Petitioner Appearing in Person,
Post Office Box 972,
Trenton, New Jersey.

To:
H. COLLIN MINTON, JR.,
Trenton Trust Bldg.,
Trenton, New Jersey;
H. BRUA CAMPBELL,
No. 40 Wall Street,
New York City;
GROVER A. GILES,
Attorney General of the State of Utah, and
ZAR E. HAYES,
Assistant Attorney General of the State of Utah,
Salt Lake City, Utah.

I. F. Huntzinger Co., *Appellate Printers,* Camden, N. J.



CASES CITED

	PAGE
Barthrop v. Kona Coffee Co.	6, 8
Crabtree v. Steele	10
Crane v. First Nat. Bank	6
Dole v. Hear	6, 8
Emlenton Refining Co. v. Chambers	6
Erie R. Co. v. Hilt	5
Hamburg v. Namura	6
Hamilton-Brown Shoe Co. v. Wolf Brothers & Co.	4
Hartman v. Greenhow	7
In re Tiffany	6
Kendall v. Stokes	7
Kendall v. United States	7
Ky v. Dennison	7
North Philadelphia Trust Co. v. Smith	5
Panama R. Co. v. Napier Shipping Co.	5
Pennsylvania Coal & Coke Co. v. Cassatt	6
Stevens v. Nave-McCord Mercantile Co.	7
United States v. Bighorn Sheep Co.	7
Watson v. Employers' Liability Assur. Corp.	7
Webster Coal & Coke Co. v. Casatt	6
Wolf Brothers & Co. Petitioners v. Hamilton-Brown Shoe Co.	5

STATUTES CITED

U. S. C. A. Title 28, Section 725	5
Laws of the State of Utah, Chapter 6, State Officers, Attorney General, 87-6-1	3
Laws of 1898, Act 40	6, 8

AUTHORITIES CITED

Words and Phrases, Permanent Edition, Vol. 16, Final Decisions, p. 593	5
Hughes Federal Practice, Vol. 5, Sec. 2913	6

REPLY BRIEF.

1. On the merits of the so-called Questions Involved set out on pp. 1-2 of respondents' brief, the petitioner's reply is to be found in the facts, laws, and documents embodied in and set forth in the thirty-one (31) paragraphs of the Complaint of the suit in equity for writ of injunction just filed with the Clerk of the District Court of the United States within and for the District of New Jersey; by reference the same paragraphs are incorporated herein and made a part of this reply brief, ten copies of which are herewith respectfully submitted.

2. The respondents and their attorneys have no right to insist that the Circuit Court of Appeals did act properly in affirming the action of the District Court and at the same time operate the conspiracy openly within the territorial jurisdiction of the District Court; or that the Circuit Court acted properly in affirming the action of the District Court granting the motion to quash the service of summons on Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey and William D. Sutton because it was by and through their very own acts which the Utah Fuel Company operated the conspiracy in the State of Utah for several years; nor that the Circuit Court of Appeals did act properly in affirming the action of the District Court in refusing to substitute Bamberger Coal Company in the place and stead of Simon Bamberger, deceased; and further in refusing to enter a default judgment against the Bamberger Coal Company; because the Opinion of the said Circuit Court reads: For the reasons sufficiently set forth in the memorandum Opinion of Judge Walker filed November 19, 1941 the orders of the District

Court from which the plaintiff appealed are affirmed. See pp. 47-48 of Petition.

Ex-judge Walker gave no reason as to the Bamberger Coal Company. He failed to decide the motion, leaving the same under his advisement; then left the District Court for the job with the telephone company. Upon these said questions the Circuit Court of Appeals did not act at all. Further, with respect to the Bamberger Coal Company the said H. Collin Minton, Jr., and H. Brua Campbell have no right to be heard, because they did not file any pleading as an answer to the plaintiff's complaint and motion for leave to substitute it; and did not appear on the hearing of the motion to substitute said coal company. Respondents filed their Notice of Motion for Order striking complaint as to Utah Fuel Company and H. Collin Minton, Jr., on April 24, 1940. To this said motion they attached a Special Appearance for Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey, and William D. Sutton. See page 231 of Petition. This said motion was heard on May 6, 1940. Notice of Motion to Substitute Bamberger Coal Company in place and stead of Simon Bamberger, deceased, filed May 20, 1940. Motion papers were served through the United States Marshal for the District of Utah, who on June 3, 1940 returned Summons served on Bamberger Coal Company by serving Wm. D. Eldridge, Vice President. On June 10, 1940, said motion was heard on a regular Motion Day and there were no appearance in opposition. A due and proper consideration of the proceedings had in this case will show that H. Collin Minton, Jr., is a person unfit to practice law.

3. The appearances of Grover A. Giles, Attorney General of the State of Utah; and Zar E. Hayes, Assistant Attorney General of the State of Utah. Petitioner says, and the certified Exhibits show, that the respondent Utah

Fuel Company and associated corporations maintain coercive and fanatic influence over the officials of the State of Utah. In the instant suit their said appearances are unauthorized by, and violative to, the laws of the State of Utah. Chapter 6, State Officers. ATTORNEY-GENERAL. 87-6-1. It is the duty of the Attorney General:

(1) To attend the Supreme Court of this state, and all courts of the United States, and prosecute or defend all causes to which the state or any officer, board or commission thereof in an official capacity is a party; and he shall have charge as attorney of all civil legal matters in which the state is in anywise interested.

(13) To institute and prosecute proper proceedings in any court of the state or of the United States, to restrain and enjoin corporations organized under the laws of this or any other state or territory from acting illegally or in excess of their corporate powers or contrary to public policy, and in proper cases to forfeit their corporate franchises, dissolve such corporations, and wind up their affairs.

In this suit the state of Utah is not interested. Neither the state nor any of its boards or agencies is called upon to pay any damage, nor to make good any judgment which may be given in the present suit. It is not interested because it did not authorize its officials to engage in conspiracies which are against it and against its laws, as well as against its public policy as it is declared by its people. It is not interested because it did not ask the Utah Fuel Company to come in and stick up its officials and hold away its wealth. Petitioner does not demand of and from the State of Utah damages for the wrongs committed by its officials because they committed them for whatever there was in the plot to be had and not in defense of the state. Petitioner is and always has been a true friend of

the state of Utah and its citizens. The attorney general and assistant attorney general have no right to represent Dr. A. C. Callister and Dr. E. D. Smith because they were not officials of the state of Utah when they staged the mob at Salt Lake City, Utah. The assistant attorney general argued before the Circuit Court that he represented them because they were called in by the District Court to make certain examinations. The attorney general and assistant attorney general is not authorized to represent every person who is called in by any of the courts of the state to take part in any mob staged by corporations and individuals against any peaceful person.

AS TO THE RESPONDENTS' COUNTER STATEMENTS.

Replying counter statement No. 1 the petitioner says:

4. The Hamilton-Brown Shoe Co. v. Wolf Brothers & Co. cited by the respondents and their said attorneys is as follows: Mr. Justice Pitney delivered the Opinion of the Court, and on page 270 2d. Co. 1, says: Complainant appealed to Circuit Court of Appeals, contending that a decree for the profits upon the first two classes of shoes, in accordance with the master's recommendation, and that it should have included the profits upon the third class, which were denied by the master. The Court of Appeals reversed the decree, with directions that defendant's exceptions to the master's report be overruled, that the report be confirmed, and that a decree be entered against defendant for the amount recommended by him, with costs. 124 C. C. A. 409, 206 Fed. 611. This writ of certiorari having been allowed, we proceed to deal with the questions presented by the Court (on page 271). It is, of course, suf-

ficiently evident that the refusal of an application for this extraordinary writ is in no case equivalent to an affirmance of the decree that is sought to be reviewed. And, although in this instance the interlocutory decision may have been treated as settling "the law of the case" so as to furnish the rule for the guidance of the referee, the District Court, and the Court of Appeals itself upon the second appeal, this Court is now reviewing the final decree by virtue of the writ of certiorari, is called upon to notice and rectify any error that may have occurred in the interlocutory proceedings. Panama R. Co. v. Napier Shipping Co., 166 U. S. 280, 284, 41 L. Ed. 1004, 1005, 17 Sup. Ct. Rep. 572

(b) Wolf Brothers & Company Petitioners v. Hamilton-Brown Shoe Company (No. 764), 204 U. S. 53 L. Ed. 1063. Petition for Writ of Certiorari to the U. S. Circuit Court of Appeals for the 8th Circuit, April 12, 1909, Denied. The writ was denied in this case but was granted in the Hamilton-Brown Shoe Co. petitioner v. Wolf, etc., U. S. C. A. Tit. 28, Sec. 725. Laws of States as Rules of Decisions.

(c) The rulings of the Court of Errors and Appeals of the State of New Jersey in the cases cited and referred to in K. second par. on page 10 of the Petition are of such and such standings as to compel the Courts of the United States to follow its said announcements. North Philadelphia Trust Co. v. Smith (C. C. A. N. J. 1926), 13 F. 2d. 585. We see no reason why they should not be followed by the courts of the United States. Erie R. Co. v. Hilt (N. J. 1918), 247 U. S. 97, 38 S. Ct. 435, 62 L. Ed. 1003.

(d) WORDS AND PHRASES PERMANENT EDITION. VOL. 16. Final Decisions, p. 593. A "final" decision for purpose of appeal is not necessarily the last decision in the case and its nature or effect rather than the

stage at which it is rendered is the true test. Laws 1898, Act 40. Dole v. Hear, 14 Haw. 554; Barthrop v. Kona Coffee Co., 10 Haw. 398.

(e) A "final decision" for appeal purposes is not necessarily the last decision in a case; the effect of an order being the true test of its finality and appealability, rather than the stage at which it was rendered. Hamburg v. Namura, 13 Haw. 702.

(f) It is the filing of signed findings and conclusions and order for judgment that constitutes the final decision, which is effective only from the date of filing and which is not made until deposited with the clerk for filing. Crane v. First Nat. Bank, 144 N. W. 96, 97, 26 N. D. 268.

(g) Hughes Federal Practice, Vol. 5, Sec. 2913. As the jurisdiction of the Circuit Court of Appeals is wholly statutory (Emlenton Refining Co. v. Chambers (C. C. A. Pa. 1926) 14 F. 2d. 104, certiorari denied, 273 U. S. 731, 47 S. Ct. 240, 71 L. Ed. 863) the meaning of "final," in a statute which limits appeals to "final decrees," becomes a matter of statutory construction, and it is within the province of the federal court to declare that a "final order" is one that ends the litigation in the trial court and that the legislative intent was against piecemeal appeals; and the use of the term "final decisions" in the act creating the Circuit Court of Appeals, to indicate a condition of reviewability, was intended to serve the same meaning as "final judgments and decrees" in earlier statutes regulatory of appellate jurisdiction (Webster Coal & Coke Co. v. Casatt (1907), 207 U. S. 181, 28 S. Ct. 108, 52 L. Ed. 160; Pennsylvania Coal & Coke Co. v. Cassatt, 207 U. S. 187, 28 S. Ct. 110, 52 L. Ed. 133; In re Tiffany (1920) 252 U. S. 32, 40 S. Ct. 239, 64 L. Ed. 443.

(h) A "final decision" is an order or judgment finally determining a particular suit (though it does not bar another action or proceeding in the same cause) (Stevens v. Nave-McCord Mercantile Co. (Colo. 1906), 150 F. 71, 80 C. C. A. 25), disposing of the entire controversy between the parties on the merits of the case, leaving nothing to be done other than to enforce by execution, what has been determined. United States v. Bighorn Sheep Co. (C. C. A. Wyo. 1921), 276 F. 710; Watson v. Employers' Liability Assur. Corp. (D. C. Tex. 1928), 23 F. 2d. 682.

(i) Sec. 3201. Finality-Judgment awarding or denying Mandamus. A judgment denying a writ of mandamus is final. Hartman v. Greenhow (1880), 102 U. S. 672, 675, 676, 26 L. Ed. 271. Mr. Justice Field delivered the Opinion of the Court (on p. 273): The judgment denying the writ of Mandamus was a final determination against the claim of the petitioner. A mandamus in cases of this kind is no longer regarded in this country a mere prerogative writ. It is nothing more than an ordinary proceeding or action in which the performance of a specific duty, by which the rights of the petitioner are affected, is sought to be enforced. Says Mr. Chief Justice Taney: "It undoubtedly came into use by virtue of prerogative power in the English Crown, and was subject to regulations and rules which have long since been disused; but the right to the writ and the power to issue it have ceased to depend upon any prerogative power, and it is now regarded as an ordinary process in cases to which it is applicable. It was so held by this Court in the case of Kendall v. United States 12 Pet., 615, and Kendall v. Stokes 3 How., 100; Ky v. Dennison, 24 How. 97 (65 U. S. XVL, 725. The Judgment, therefore, in the case, stands like the judgment in an ordinary action at law, subject to review under similar conditions.

The Memorandum Opinion of the Findings of Fact and Conclusions of Law of Ex-District Judge Walker as it is drawn in favor of H. Collin Minton, Jr., Caroll C. Johnson, William V. Rosenkrans, Nicholas J. Pappas, Helen N. Pappas, Harry Sussman, Dr. Frederick Dunn, Dr. A. C. Callister, Dr. E. D. Smith, Charles E. Mabey, and William D. Sutton, and the Orders signed and entered thereupon end the litigation in this suit in the District Court between this petitioner and the said respondents and are final orders and indicate a condition of reviewability within the meaning of the just above quoted authorities. The contention of the respondents and their said attorneys as to the petition being abortive is of no merits. The nature or effect rather than the stage at which the decision is rendered is the true test. Laws 1898, Act 40, Dole v. Gear, 14 Haw. 554; Barthrop v. Kona Coffee Co., 10 Haw. 398.

5. Replying Counter Statement No. 2, the petitioner insists that subdivision (b) of par. 5 of Supreme Court Rule 38 affords the following proper bases for the petition:

Where a Circuit Court of Appeals has rendered a decision in conflict with the decision of another Circuit Court of Appeals on the same matter; This is pleaded. See M. JURISDICTION. (f) On page 14 of petition; or has decided a (several) federal questions in a way probably in conflict with applicable decisions of this court. See the Reasons for granting the Writ and Cases Cited therein, as set forth on pages 21 to 34 of the Petition; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision. This is also pleaded in the petition. See the Assignment of Errors set forth on page 35 to par. 9 on page 37.

Replying Counter Statement 3 the petitioner says that the petition is in strict compliance with the provisions of subdivision 2 of Sup. Ct. Rule 38. The petition shall contain a summary and short statement of the matter involved; See A, on pp. 2-3-4; see also B, on pp. 4-5; C, on p. 5; D, on pp. 5-6; E, on p. 6; F, on pp. 6-7; G, on pp. 7-8, of the petition. A statement particularly disclosing the basis upon which it is contended that this court has jurisdiction to review the judgment or decree in question; this is also pleaded. See M, Jurisdiction, pp. 13-14; see also J, on pp. 9-10; K, on pp. 10-11-12; the question presented; the questions presented are twenty-six, and are set forth on pp. 15 to 21 of petition; and the reasons relied on for the allowance of the writ. The reasons relied on for the allowance of the writ of certiorari are set forth on pages 21 to 34, inclusive, of the petition. It follows that counter statement 3 is without merits. It can only serve to libel those who plead it.

Replying Counter Statement 4, the petitioner says that this said statement is obscene and objectionable pleading. See Table of Contents of Petition and the Notice to the Respondents and their attorneys printed on page 42 of the petition.

Replying Counter Statement 5, the petitioner says that this said statement is also obscene and unreasonable, because, in the first place, they were served with printed copies of complaint and are presumed to have in their possession seven (7) copies of the complaint and index attached thereto complete, and at the same time quote (p. 3) from complaint.

Replying Counter Statement 6, the petitioner says that the declaration is before this court and the requisite number of copies filed with the clerk of this court and this does not give counsel for the respondents any right to libel the humble petitioner. And further the excerpt from

the Opinion of the Supreme Court of Iowa in Crabtree v. Steele, 115 N. W. 593, has nothing to do and affords no defenses to the criminal acts in violation of the Constitution and laws of the United States of the defendants. The liability of the defendants is fixed by Federal Law and not by the said Crabtree case. See the petition and briefs attached thereto. See also the exhibits filed in this court as well as those left in the District Court.

Replying Counter Statement 7, the petitioner says that the ruling of the District Court is biased and violative to the laws of the United States. Also the Articles of the United States Constitution relied upon by the petitioner. See pages 293-305 of petition; pp. 28-29-30-31 and cases cited thereunder in the petition for the Writ of Certiorari.

Accordingly, the petitioner urges that this Court may not consider the respondents' brief, but proceed and grant the Writ of Certiorari as it is in the right and justice and the laws of the United States, the interest of the public, and the interest of your humble petitioner.

Respectfully submitted,

NICHOLAS J. CURTIS, LL.B.,
Petitioner Appearing in Person,
Post Office Box 972,
Trenton, New Jersey.

To:
H. BRUA CAMPBELL,
H. COLLIN MINTON, JR.,
GROVER A. GILES, and
ZAR E. HAYES,
Attorneys pro se and
for the Respondents.

Dated the 16th day of March, A. D. 1943.